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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 In re:

5 PLATINUM-BEECHWOOD LITIGATION 18 Civ. 06658 (JSR)

6 MARTIN TROTT and CHRISTOPHER 18 Civ. 10936 (JSR)  
7 SMITH, as Joint Official  
8 Liquidators and Foreign  
9 Representatives of PLATINUM  
PARTNERS VALUE ARBITRAGE FUND LP  
(in Official Liquidation) and  
PLATINUM PARTNERS VALUE ARBITRAGE  
FUND LP (in Official Liquidation)

10 Plaintiffs,

11 v.

12 PLATINUM MANAGEMENT (NY) LLC,  
13 et al.,

14 Defendants.

15 -----x Trial

16  
17 New York, N.Y.

18 December 14, 2022  
19  
20 Before:  
21 HON. JED S. RAKOFF,  
22 District Judge  
23 and a Jury  
24  
25

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## 1 APPEARANCES

2 HOLLAND & KNIGHT, LLP  
3 Attorneys for Plaintiffs  
4 BY: WARREN E. GLUCK  
5 MARTIN L. SEIDEL  
6 RICHARD A. BIXTER JR.  
7 QIAN (SHEILA) SHEN  
8 NOAH W.S. PARSON  
9 ELLIOT A. MAGRUDER10 KATTEN MUCHIN ROSENMAN, LLP  
11 Attorneys for Defendant Bodner  
12 BY: ELIOT LAUER  
13 GABRIEL HERTZBERG  
14 JULIA B. MOSSE15 CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP  
16 Attorneys for Defendant Bodner  
17 BY: NATHANIEL C. AMENT-STONE  
18 ALLESANDRA TYLER

19 Also Present:

20 Michael Robson, Paradocs Motion Support  
21 Esterah Brown, Paralegal, Curtis Mallet  
22  
23  
24  
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1 (Trial resumed; jury not present)

2 THE COURT: Please be seated. Linda is checking on  
3 the jury but let's get the witness on the stand so we can start  
4 right away.

5 You will recall, Mr. Gluck, that you have six more  
6 minutes on nonchart stuff and a half hour on the other stuff.

7 MR. GLUCK: That's my understanding.

8 MR. HERTZBERG: Your Honor, may I take care of a  
9 technical issue while waiting for the jury?

10 THE COURT: Yes.

11 MR. HERTZBERG: So on December 10 we had Mr. Fuchs on  
12 the stand, and the Court may recall that we played a video from  
13 his deposition. So that the jury can see the text of what was  
14 played on the video, we have marked an exhibit, it is DX 762.  
15 I understand there is no objection, and we would offer it.

16 THE COURT: Okay, received.

17 (Defendant's Exhibit 762 received in evidence)

18 THE COURT: I am looking forward to your letters at  
19 noon. I emphasize they need to be filed by noon because there  
20 are a bunch of decisions I need to make

21 THE DEPUTY CLERK: All jurors present.

22 THE COURT: Great. Let's bring in the jury.

23 (Continued on next page)

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Bodner - Cross

1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen. Thank  
3 you, as always, for your promptness. We are in the home  
4 stretch.

5 So please be seated, counsel, and let's continue.

6 DAVID BODNER, previously sworn, resumed.

7 CROSS-EXAMINATION

8 BY MR. GLUCK:

9 Q. Mr. Parson, please bring up Plaintiffs' 440, which we seek  
10 to move into evidence.

11 MR. LAUER: We have no objection.

12 THE COURT: Received.

13 (Plaintiff's Exhibit 440 received in evidence)

14 BY MR. GLUCK:

15 Q. Mr. Bodner, Maggie Muller became your secretary after  
16 Ms. Albanese left in 2015, is that correct?

17 A. Yes.

18 Q. Okay. Thank you.

19 Mr. Parson, please call up Plaintiffs' Exhibit 956,  
20 and as you are doing something -- as you are doing that, I will  
21 ask the question.22 Mr. Bodner, you testified that the liability you were  
23 worried about had to do with some sort of gift tax issue?

24 A. That's what I recall.

25 MR. GLUCK: We would seek to move this into evidence.

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Bodner - Cross

1 Q. Were you negotiating --

2 MR. LAUER: Wait. I have to read it.

3 We are okay. No objection.

4 MR. GLUCK: Received.

5 (Plaintiff's Exhibit 956 received in evidence)

6 BY MR. GLUCK:

7 Q. Do you see in the second line "any litigation paid for from  
8 Platinum Management in a timely fashion"?

9 A. Yes.

10 Q. What liabilities were you worried about?

11 MR. LAUER: Objection.

12 THE COURT: This is not from Mr. Bodner. It is from  
13 Ms. Horowitz, so I don't know that he knows what is necessarily  
14 being referred to.

15 BY MR. GLUCK:

16 Q. Did you provide Platinum Management with a list of wants?

17 THE WITNESS: I can answer that?

18 THE COURT: There is no objection, so --

19 A. What do you mean "wants"?

20 Q. In connection with the release agreement.

21 A. I don't recall.

22 Q. Do you recall asking that litigation be paid from Platinum  
23 Management in a timely fashion?

24 A. No, I don't recall talking about litigation.

25 Q. Bring this e-mail down.

155 Mce2Pla1

155 Bodner - Cross

1 You testified that you had no idea about Jona Rechnitz  
2 and COBA and those issues?

3 MR. LAUER: Objection.

4 MR. GLUCK: Sorry?

5 THE COURT: Well, what's the objection?

6 MR. LAUER: It is both COBA and the phrasing of "those  
7 issues."

8 MR. GLUCK: Credibility on --

9 THE COURT: My recollection, for what its worth, is  
10 similar to plaintiffs' counsel in this regard, but why don't  
11 you just put the underlying question.

12 MR. GLUCK: Sure.

13 BY MR. GLUCK:

14 Q. My recollection, did you previously testify that  
15 Mr. Huberfeld did not share the issues of COBA bribe and Jona  
16 Rechnitz with you prior to his arrest?

17 A. Yes.

18 Q. Please call up Plaintiffs' Exhibit 577. Excuse me, 578.

19 We seek to move this into evidence.

20 MR. LAUER: No objection.

21 THE COURT: Received.

22 (Plaintiff's Exhibit 578 received in evidence)

23 BY MR. GLUCK:

24 Q. Did you call up Jona Rechnitz the day the check was cut to  
25 him?

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Bodner - Cross

1 MR. LAUER: Objection.

2 Q. Is that right?

3 THE COURT: Well, the -- having looked at this  
4 document, do you recall having a conversation with Jona  
5 Rechnitz?

6 THE WITNESS: Yes, I had quite a few conversations  
7 with Jona Rechnitz.

8 Q. Thank you.

9 THE COURT: Put another question.

10 BY MR. GLUCK:

11 Q. Mr. Bodner, you never reviewed the audit valuations that  
12 were done for PPVA, did you?

13 A. To my recollection I never reviewed any audit -- any audit  
14 what? Valuation.

15 MR. GLUCK: I was just actually looking at the judge.  
16 He is going to be shocked. I'm done early. Now I will move to  
17 the --

18 THE COURT: Yes.

19 MR. GLUCK: -- 30 minutes.

20 THE COURT: Yes.

21 BY MR. GLUCK:

22 Q. Mr. Parson, please call up PX 440. Excuse me. I'm sorry.  
23 PX 1283, which we seek to move into evidence.

24 MR. LAUER: No objection.

25 THE COURT: Received.

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Bodner - Cross

1 (Plaintiff's Exhibit 1283 received in evidence)

2 BY MR. GLUCK:

3 Q. This is a meeting with Beechwood, right?

4 A. It seems like it was a meeting with Beechwood.

5 Q. Mr. Bodner, you are a courteous person when it comes to  
6 your business associates and partners, is that fair to say?

7 A. I try to be.

8 Q. Where is there any return e-mail saying you wouldn't be  
9 able to make this meeting? Is there one?

10 A. I might have attended it or I might have just told them I  
11 can't attend it. I don't remember it.

12 Q. Thank you.

13 Mr. Parson, PX 1325, please. Seek to move it into  
14 evidence.

15 MR. LAUER: I have to read it.

16 THE COURT: I'm sorry, is someone going to provide me  
17 with a copy?

18 MR. LAUER: No objection.

19 THE COURT: Received.

20 (Plaintiff's Exhibit 1325 received in evidence)

21 BY MR. GLUCK:

22 Q. This is another meeting with Beechwood and Scott Taylor,  
23 right?

24 MR. LAUER: Objection.

25 THE COURT: Well, as phrased, sustained.

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Bodner - Cross

1 BY MR. GLUCK:

2 Q. This is another meeting with Mr. Scott Taylor?

3 MR. LAUER: Objection.

4 THE COURT: What he has objected to the is the word --

5 Q. Is this --

6 THE COURT: -- another.

7 Q. Is this a meeting with Scott Taylor?

8 A. On the e-mail it says it was a meeting. I'm not sure if I  
9 attended this meeting or not.10 Q. Is there any return e-mail or follow-up saying you wouldn't  
11 be able to attend this meeting?12 A. If I couldn't attend the meeting I would usually tell Angie  
13 to call Mark or Murray and tell them that I can't be there.

14 Q. Take this down. Mr. Parson, PX 1327. Move into evidence.

15 MR. LAUER: Wait.

16 No objection.

17 THE COURT: Received.

18 (Plaintiff's Exhibit 1327 received in evidence)

19 BY MR. GLUCK:

20 Q. Is this another meeting with Moshe Feuer and Scott Taylor  
21 of Beechwood?22 A. It looks like, but again I don't think I attended a lot of  
23 these meetings in the office, and the way I would tell them is  
24 I can't be there at 3:30 or 4:00.

25 Q. So there is no return e-mail saying you wouldn't be able to

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Bodner - Cross

1 make this meeting?

2 A. I didn't e-mail. I would call Murray or Mark or somebody  
3 else and just tell them that I couldn't be there.

4 Q. You can take this down, Mr. Parson. PX 1359, seeking to  
5 move it into evidence.

6 Is this another meeting Beechwood, Scott Taylor, Moshe  
7 Feuer, and if you look at the date --

8 THE COURT: I'm sorry. Is this in evidence?

9 MR. LAUER: It's not.

10 MR. GLUCK: Oh. Move it into evidence.

11 MR. LAUER: No objection.

12 THE COURT: Received.

13 (Plaintiff's Exhibit 1359 received in evidence)

14 A. I have the same answer. I usually did not attend these  
15 meetings to my recollection, and the way I would tell them is I  
16 just can't be there. I trusted Mark Nordlicht and Murray  
17 Huberfeld, especially Murray Huberfeld on Beechwood issues.

18 Q. This is the week after the Black Elk bond subordination?

19 A. I have no idea.

20 Q. Um-hmm.

21 No return e-mail saying you wouldn't be able to make  
22 it?

23 A. I don't see any.

24 Q. Mr. Parson, PX 1365, please. This is the acceptance.

25 THE COURT: Are you offering it?

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Bodner - Cross

1 MR. GLUCK: Yes, I'm offering it.

2 MR. LAUER: We have no objection.

3 THE COURT: Received.

4 (Plaintiff's Exhibit 1365 received in evidence)

5 BY MR. GLUCK:

6 Q. You accepted the invitation to this meeting?

7 A. It might have been accepted for Murray Huberfeld or for me.  
8 I don't know. I really don't know. I don't remember the  
9 meeting.

10 Q. To try to jog your memory, you don't have a recollection of  
11 some meetings the week after the Black Elk --

12 A. No.

13 Q. -- bond subordination?

14 A. No. I'm sorry. I have no recollection at all about the --

15 Q. All right. Mr. Parson, PX 1427. Move into evidence.

16 MR. LAUER: No objection.

17 THE COURT: Received.

18 (Plaintiff's Exhibit 1427 received in evidence)

19 BY MR. GLUCK:

20 Q. This is a direct meeting with you and Scott Feuer, February  
21 8, 2016?

22 MR. LAUER: Objection. There is no Scott Feuer.

23 Q. Mark Feuer.

24 A. This might have been a meeting I attended because usually I  
25 met with Mark Feuer about the charity. This puts me at the

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Bodner - Cross

1 time more or less when we started to raise money for the  
2 Passover campaign, and I used to go around to all the partners  
3 and try to solicit them that they should come to the party and  
4 also give a nice check.

5 Q. It's also a little bit after your Seth Gerszberg  
6 presentation and the Nordlicht side letter, right?

7 MR. LAUER: Objection.

8 A. I think that.

9 THE COURT: Hold on.

10 MR. LAUER: Objection.

11 THE WITNESS: Sorry, sorry.

12 THE COURT: Sustained. I think it's really for  
13 argument, not for a question.

14 BY MR. GLUCK:

15 Q. Mr. Parson, PX 1122, please. Move into evidence.

16 MR. LAUER: Wait.

17 No objection.

18 THE COURT: Received.

19 (Plaintiff's Exhibit 1122 received in evidence)

20 BY MR. GLUCK:

21 Q. Is Solo a restaurant?

22 A. Yes, it is.

23 Q. Is that one of the restaurants where you would hold your  
24 partners meetings?

25 A. Yes, it is.

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Bodner - Cross

Q. Did you attend this partner meeting?

A. It looks -- from the e-mail it looks like "did David Bodner want to meet for dinner tomorrow night with Murray, Uri, and I" and she sent back "yes," so it looks like I wanted to meet with them.

Q. Did you send a follow-up e-mail saying you couldn't make this?

A. I don't see any follow-up e-mail. This looks like it's a meeting I wanted to go to.

Q. Thank you.

Exhibit PX 1141, please, Mr. Parson.

THE COURT: Are you offering it?

MR. GLUCK: Offering.

MR. LAUER: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 1141 received in evidence)

BY MR. GLUCK:

Q. Is this an example of another partner meeting being set up at Solo?

A. It looks like it, it definitely looks like that.

Q. Mr. Uri, where it says Uri, that's Uri Landesman, right?

A. Correct.

## O. PPVA?

A. It could be PPVA or PPCO.

Q. Could it?

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Bodner - Cross

1 A. I think so.

2 Q. For Uri Landesman?

3 A. Yes, Uri was an owner. The way I remember, he also got  
4 commissions from PPCO.

5 Q. Mr. --

6 A. That's my recollection.

7 Q. Mr. Parson, PX 1167, please.

8 MR. LAUER: No objection.

9 MR. GLUCK: Move into evidence.

10 THE COURT: Received.

11 (Plaintiff's Exhibit 1167 received in evidence)

12 BY MR. GLUCK:

13 Q. Do you remember setting up this meeting?

14 A. It looks like I set it up. Angela wrote, "David wants to  
15 have a meeting at Solo 5 p.m."

16 Q. Did you attend this meeting?

17 A. I would think I attended it. I don't know for sure. It is  
18 2012.

19 Q. No follow-up e-mails saying you weren't going to be  
20 attending, is there?

21 A. Again, if I didn't attend an e-mail [sic] I would call  
22 Murray, usually Murray, and tell him, I'm sorry I can't come,  
23 even if the last minute something came up.

24 Q. Thank you.

25 Mr. Parson, PX 1187, please. Move into evidence.

Mce2Pla1

Bodner - Cross

1 MR. LAUER: Wait.

2 No objection.

3 THE COURT: Received.

4 (Plaintiff's Exhibit 1187 received in evidence)

5 BY MR. GLUCK:

6 Q. Did you attend this? Is this another partner meeting?

7 A. Again, I have the same answer. It is a partners meeting.

8 It looks like from the e-mail. If I attended, I don't know.

9 Q. No return e-mail?

10 A. I don't see any return e-mail.

11 Q. Did you discuss the closing out of the BEOF funds at this  
12 meeting?

13 A. I do not remember discussing -- closing out of what?

14 Q. Closing out on the BEOF funds at this meeting.

15 A. I don't remember discussing at all the BEOF funds. These  
16 meetings were basically about what liquidity the fund needs to  
17 meet over the next month.

18 Q. Thank you.

19 Mr. Parson, PX 1205, please.

20 So every time, just so I understand your testimony,  
21 every time you are asking for these meetings to be set up, you  
22 think it's because you are going to be told about some  
23 liquidity issues and what money the fund needs?

24 A. When I set up these meetings these are friendly meetings  
25 that the partners are getting together for dinner and we

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Bodner - Cross

1 discussed a lot of different things. We also discussed private  
2 businesses that I was involved with, that I needed Mark's okay  
3 to go ahead with.

4 Also, when it came to the fund, I don't see anything  
5 showing that I was involved in any of B-E whatever it's called  
6 or thing that was more Mark with David Levy. These things when  
7 it came to Platinum was: We need money. We need money. What  
8 was discussed at the meeting could have been a million  
9 different things. It could have been the charity party that I  
10 made twice a year, which I need help, they should help me  
11 solicit people. It could have been private businesses that I  
12 needed Mark's okay to go ahead with --

13 Q. Thank you.

14 You are setting up all these meetings, right?

15 MR. LAUER: Objection.

16 THE COURT: Yes, I think it's --

17 Q. Are you setting up all these meetings?

18 MR. LAUER: Objection.

19 THE COURT: What do you mean by "all."

20 BY MR. GLUCK:

21 Q. Are you scheduling all of these meetings?

22 MR. LAUER: Objection.

23 THE COURT: No. You misunderstood the objection.

24 MR. GLUCK: Oh.

25 THE COURT: So do you mean all of the --

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Bodner - Cross

1 MR. GLUCK: The ones we just looked at?

2 THE COURT: Just the last couple.

3 MR. GLUCK: Correct.

4 THE COURT: Not the previous four or five or six.

5 MR. GLUCK: No, the ones that specifically say --

6 THE COURT: All right. So the last couple ones we  
7 looked at appear to be ones that you set up, yes?

8 THE WITNESS: Appears to be that, yes.

9 THE COURT: Okay. So these were fairly regular  
10 meetings, yes?

11 THE WITNESS: They were meetings that we used to have,  
12 yeah, fairly regularly, if you call that.

13 THE COURT: And Mr. Nordlicht was usually there, yes?

14 THE WITNESS: Yes.

15 THE COURT: And I think you told us previously he  
16 would make some presentation, you would have a small note or  
17 two regarding the situation at Platinum, yes.

18 THE WITNESS: Yes.

19 THE COURT: So is it your testimony that you never  
20 discussed with him NAV?

21 THE WITNESS: I never -- I mean, I did -- I could have  
22 asked him how much money the fund has, if that's what you mean  
23 by NAV, how much money the fund has. I never discussed how we  
24 came to this NAV. I might have just asked --

25 THE COURT: Okay, I understand your answer. The

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Bodner - Cross

1 question is why not?

2 THE WITNESS: I had no reason to.

3 THE COURT: Okay.

4 MR. GLUCK: Move this into evidence, please.

5 MR. LAUER: We don't have an objection. No objection.

6 THE COURT: Received.

7 (Plaintiff's Exhibit 1205 received in evidence)

8 MR. GLUCK: PX 1244, please. Move into evidence.

9 MR. LAUER: No objection.

10 THE COURT: Received.

11 (Plaintiff's Exhibit 1244 received in evidence)

12 BY MR. GLUCK:

13 Q. This is another meeting you are scheduling?

14 A. It could be me, it could be Murray. I think, you know,  
15 with Angela, it is probably me, but I can't say for sure.

16 Q. Do you see at the bottom -- do you see at the bottom where  
17 it says "Can you do a partner with Uri, Murray and Mark?

18 A. Yes.

19 Q. That presumes you, right?

20 A. It says "Hi, Uri, can you do a partners meeting with Uri,  
21 Murray, and Mark?" It doesn't make sense to me. She is asking  
22 Uri if he can do a meeting with Uri? Oh. I'm sorry. I see  
23 sent back, "I assume you mean David instead of Uri. Ironically  
24 David is my middle name." Yes.

25 Q. Thank you.

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Bodner - Cross

1           Take this down, Mr. Parson.

2           PX 1108, please. Move to admit.

3           MR. LAUER: Wait.

4           No objection.

5           THE COURT: Received.

6           (Plaintiff's Exhibit 1108 received in evidence)

7           MR. LAUER: What number was this?

8           MR. GLUCK: That was 1108.

9           BY MR. GLUCK:

10          Q. And this is a calendaring by -- for PPVA meeting with Uri  
11           Landesman and investor Erani, Ezra Erani?

12          A. I don't know if Ezra Erani was an investor in the fund. I  
13           know Ezra Erani.

14          Q. Who is he?

15          A. Ezra Erani is a Sephardic Jew. He is a very charitable  
16           person. I used to meet with him about giving me money for  
17           charity for the parties that we used to make twice a year. He  
18           used to sometimes attend it also. More than that, I did not  
19           speak to Ezra Erani about.

20          Q. Prior to Mr. Landesman's joining Platinum Management as  
21           president, you didn't have any social or business connection to  
22           him, did you?

23          A. I did. I just testified.

24          Q. Mr. Landesman?

25          A. No, Mr. Landesman, no. I thought you mend Ezra Erani.

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Bodner - Cross

1 Q. I think you misheard my question.

2 Prior to Mr. Landesman joining Platinum Management,  
3 you didn't have any social or business connection to  
4 Mr. Landesman, did you?

5 A. No, I did not.

6 Q. Mr. Landesman is Platinum Management president, right?

7 A. Yes, he was.

8 Q. You are saying this meeting could have been about charity?

9 A. The part with me and Ezra Erani, I did not attend investors  
10 meeting if somebody was pitching him. It was usually Murray  
11 himself, Uri himself, Bernie Fuchs or jointly Bernie Fuchs,  
12 Murray. I did not attend these meetings. I sat in my office  
13 myself. I did attend if it was somebody that I could solicit  
14 for my parties, my charity. I would go in and ask them if they  
15 could come to the party and donate.

16 Q. And then you don't know that Mr. Erani was an investor in  
17 PPAV?

18 A. I'm sorry. I don't know that.

19 MR. GLUCK: PX 1441, please. Move into evidence

20 MR. LAUER: One second.

21 I object to this. We are not on it.

22 MR. GLUCK: This is a business record.

23 THE COURT: Hold on.

24 Yeah, I think on its face it's a business record.

25 Received.

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Bodner - Cross

1 (Plaintiff's Exhibit 1441 received in evidence)

2 BY MR. GLUCK:

3 Q. Is Mr. Erani an investor in PPVA?

4 A. From this e-mail it looks like he was sent a subscription  
5 agreement.

6 Q. Is he one of your contacts?

7 A. Ezra Erani was not my contact. I knew him. It was more  
8 Murray's contact, but I did know him.

9 Q. PX 1132, it's three days after your meeting with the  
10 subscription agreement?

11 MR. LAUER: Object to that.

12 THE COURT: I think you just need to put questions.

13 MR. GLUCK: Okay. We move to admit this as well.

14 MR. LAUER: No objection.

15 THE COURT: Received.

16 (Plaintiff's Exhibit 1132 received in evidence)

17 BY MR. GLUCK:

18 Q. Who is Aaron Elbogen?

19 A. Person I did a lot of business with, investing in deals  
20 that he had.

21 Q. Former partner with yourself and Murray Huberfeld?

22 A. We both invested with him.

23 Q. He an investor in PPVA?

24 A. He was an investor in PPVA.

25 Q. Andy Katzenstein, do you remember him?

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Bodner - Cross

1 A. I remember Randy Katzenstein coming to the office and  
2 showing me some sort of a trading platform.

3 Q. Did he pitch to be part of Platinum?

4 A. He didn't pitch me that. He pitched me a strategy if I  
5 would invest in it.

6 Q. You don't remember?

7 A. I remember that he showed me some -- I didn't understand it  
8 fully, but he showed me some sort of a trading platform.

9 Q. All right. Did he want Platinum to invest, Katzenstein?

10 A. If I remember correctly, he met with me about myself  
11 putting money into his platform.

12 Q. Just you, not Platinum?

13 A. No, I don't know.

14 Q. Not Beechwood?

15 A. I don't know. He met with me. He met with me and Murray.

16 MR. GLUCK: PX 1134, please. Move it into evidence.

17 MR. LAUER: No objection.

18 THE COURT: Received.

19 (Plaintiff's Exhibit 1134 received in evidence)

20 BY MR. GLUCK:

21 Q. Who is Richard Stadtmauer?

22 A. Richard Stadtmauer was a friend a long time. I invested in  
23 a lot of real estate with him and some other stuff.

24 Q. Investor in PPAV?

25 A. Yes, he was.

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Bodner - Cross

1 Q. Tzvi Rosenblum?

2 A. I mentioned before Tzvi Rosenblum was a person who was on  
3 drugs. I took him under my wings to try to bring him back as a  
4 productive member of society.

5 Q. George Weinberger?

6 A. George Weinberger was probably a charity meeting. He was  
7 the chairman of an organization called Agudath Israel.

8 Q. The 5 p.m. meeting to see the property in Westchester, is  
9 that a reference to Agera?

10 A. No, that's not. That's a reference to a drug center.

11 Q. Drug center.

12 A. Yes, to open up a drug center.

13 Q. Did Mr. Weinberger own nursing homes with Bernie Fuchs?

14 A. I have no idea.

15 Q. Let's do PX 1226.

16 MR. LAUER: No objection.

17 THE COURT: Received.

18 (Plaintiff's Exhibit 1226 received in evidence)

19 BY MR. GLUCK:

20 Q. Who is Karen Lau?

21 A. Karen Lau was -- to my recollection was Mark Nordlicht's  
22 secretary.

23 Q. PPVA invested in China Horizon, right?

24 A. Yes.

25 Q. Did you attend this meeting?

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Bodner - Cross

1 A. It sounds like I attended it, yes.

2 MR. GLUCK: Plaintiff Exhibit 433, please.

3 MR. LAUER: Object on that. No connection. I  
4 withdraw it. No objection.

5 THE COURT: Received.

6 MR. LAUER: Hard to read.

7 (Plaintiff's Exhibit 433 received in evidence)

8 BY MR. GLUCK:

9 Q. Thor Equities?

10 A. Thor Equities was something that was owned by somebody Joey  
11 Sitt.

12 Q. And why did you want him to see this?

13 A. If I remember correctly, Alan Clingman was looking for  
14 money for China Horizon and I felt that maybe Joey Sitt could  
15 be a partner and invest money in China Horizon.

16 Q. You were trying to arrange for a bridge loan?

17 A. I was introducing him to somebody who I felt would have an  
18 interest in something like this.

19 Q. Thank you, Mr. Bodner.

20 A. I'm finished?

21 Q. In my book.

22 MR. LAUER: We have no questions. Thank you,  
23 Mr. Bodner.

24 THE WITNESS: Thank you. Thank you, your Honor.

25 THE COURT: Thank you very much. You may step down.

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Czapla - Direct

1                   THE WITNESS: Thank you, your Honor.

2                   (Witness excused)

3                   THE COURT: Call your next witness.

4                   MS. MOSSE: We call John Czapla.

5                   JOHN CZAPLA,

6                   called as a witness by the defendant,

7                   having been duly sworn, testified as follows:

8                   THE COURT: Counsel.

9                   DIRECT EXAMINATION

10                  BY MS. MOSSE:

11                  Q. Good morning, Mr. Czapla.

12                  A. Good morning.

13                  Q. Where do you currently work?

14                  A. Valuation Research Corporation.

15                  Q. What's your title?

16                  A. Senior managing director of the portfolio valuation group  
17 and I'm also the chairman of the group.

18                  Q. What type of company is Valuation Research Corporation?

19                  A. It's a consulting firm on valuations, providing valuation  
20 consulting services --

21                  Q. How many --

22                  A. -- to keep it concise.

23                  Q. How many employees does it have?

24                  A. About 250.

25                  Q. And does it also go by VRC?

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Czapla - Direct

1 A. It does, VRC.

2 Q. So I may sometimes say VRC instead of saying Valuation  
3 Research Corporation.

4 A. That's fine.

5 Q. How long have you been at VRC?

6 A. Since 1999.

7 Q. Have you worked there continuously that whole time?

8 A. Yes.

9 Q. What's your highest level of education?

10 A. Bachelor of arts in -- from the University of Pittsburgh.

11 Q. Do you hold any professional licenses or degrees?

12 A. I have a CFA, charter financial analyst.

13 Q. I hear that's a very prestigious --

14 A. It's very challenging.

15 Q. Congratulations.

16 Are you familiar with a company called CohnReznick?

17 A. I am.

18 Q. And are you familiar with a company called Platinum  
19 Partners Value Arbitrage Fund or PPVA?

20 A. Yes.

21 Q. Did there come a time that VRC was engaged by CohnReznick  
22 to provide certain valuation services in connection with its  
23 audit of PPVA's financial statements?

24 A. That is correct, yes.

25 Q. And was that in connection with the audit of PPVA's

Mce2Pla1

Czapla - Direct

1 financial statements for the year ended December 31, 2014?

2 A. Yes, 2014, um-hmm.

3 Q. And what was the scope VRC's engagement?

4 A. To provide an independent valuation opinion, it was a range  
5 of values on I think it was two oil and gas companies.

6 Q. Do you recall the names of those oil and gas companies?

7 A. I would say one was Golden Gate and then north something,  
8 Northfield, Northstar.

9 Q. Northstar?

10 A. Yeah. Um-hmm.

11 Q. You said to provide a range of values. What does that  
12 mean?

13 A. So we provide -- as it sounds, we provide independent range  
14 of values all low and higher range, a reasonable range of  
15 values we call that.

16 Q. Why is a low and high range of values something that VRC  
17 provides?

18 A. That is what was requested from the client to have a  
19 reasonable range of values as opposed to a point estimate.

20 Q. When you say a reasonable range of values, does that mean  
21 that any value that falls within that low or high range is  
22 considered by VRC to be reasonable?

23 A. Yes.

24 MR. GLUCK: Objection.

25 THE COURT: I assume the objection is for leading and

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Czapla - Direct

1 the objection is sustained. Put another question.

2 BY MS. MOSSE:

3 Q. What do you mean by a reasonable range of values?

4 A. Just a low-high range we think is reasonable that someone  
5 would actually theoretically pay for an entity.

6 Q. Did VRC prepare a written report setting forth the results  
7 of its work?

8 A. We did.

9 Q. Can we please pull up, Mr. Robson, DX 763.

10 Is this the written report that VRC prepared?

11 A. Yes.

12 MS. MOSSE: We offer it.

13 MR. GLUCK: No objection.

14 THE COURT: Received.

15 (Defendant's Exhibit 673 received in evidence)

16 BY MS. MOSSE:

17 Q. Mr. Czapla, your name is on the bottom of this report. It  
18 says, "Contact John Czapla." Do you see that?

19 A. Yes.

20 Q. And it says that this report is prepared for CohnReznick.  
21 Do you see that?

22 A. I do.

23 Q. Was VRC, just to clarify, engaged by CohnReznick or by  
24 PPVA?

25 A. By CohnReznick.

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Czapla - Direct

1 Q. Can we turn, please, to page 4 of the report. This is a  
2 section entitled Engagement Overview.

3 A. Um-hmm.

4 Q. And if you look at the second paragraph, first line, you  
5 see, "The investments subject to valuation are Golden Gate and  
6 Northstar for which we provide a range of values."

7 Is that accurate that VRC provided a range of values  
8 for Golden Gate and Northstar?

9 A. Yes.

10 Q. Can we --

11 THE COURT: It goes on in the very same sentence to  
12 say "and Golden Globe, for which we provided a negative  
13 assurance opinion on Platinum's internal valuation." What does  
14 that mean?

15 THE WITNESS: So there was -- it looks like there was  
16 a third entity where we were asked to look at Platinum's  
17 internal valuation work papers and simply opine if it was  
18 reasonable or not, so not to provide an independent opinion.  
19 It's a lighter opinion.

20 THE COURT: So you -- a negative assurance opinion on  
21 Platinum's internal valuation is your opinion that they got it  
22 wrong.

23 THE WITNESS: That it's not unreasonable.

24 THE COURT: That their valuation was not reasonable.

25 THE WITNESS: Not unreasonable. So we are saying it

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Czapla - Direct

1 is okay.

2 THE COURT: So not unreasonable?

3 THE WITNESS: Yeah. That's how it is defined.

4 THE COURT: So -- well, that's all and good, but since  
5 neither the jury nor I are familiar with your definitions,  
6 that's why I am trying to figure out what this means.

7 THE WITNESS: Sure.

8 THE COURT: So a negative assurance opinion is a  
9 statement that their valuation is not unreasonable.

10 THE WITNESS: Correct.

11 THE COURT: As opposed to a statement that their  
12 valuation is reasonable.

13 THE WITNESS: Correct.

14 THE COURT: Why the difference?

15 THE WITNESS: You have to ask my -- our lawyers, I  
16 guess they deem that a lighter opinion -- that not unreasonable  
17 is a lighter opinion than a reasonable opinion.

18 THE COURT: When you say a lighter opinion, what do  
19 you mean.

20 THE WITNESS: As opposed to giving an actual point  
21 estimate.

22 THE COURT: Well, are you saying that the negative  
23 assurance opinion says that you have less confidence in their  
24 internal valuation than you did when you give a positive  
25 assurance opinion.

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Czapla - Direct

1                   THE WITNESS: You could say that.

2                   THE COURT: Well, I'm asking you.

3                   THE WITNESS: It's -- I would say it is similar, but  
4 the distinction for us is really the difference between  
5 providing an actual point estimate or a range of values or an  
6 opinion such as this that their -- what Platinum put together  
7 is not unreasonable. We are not doing the full-level diligence  
8 that we would normally do.

9                   THE COURT: Go ahead.

10                  BY MS. MOSSE:

11                  Q. Mr. Czapla, you used the term "point estimate" a few times.  
12 What does that mean?

13                  A. It means just a single valuation opinion.

14                  Q. In case it wasn't clear, who is CohnReznick?

15                  A. They are an audit firm, an accounting firm.

16                  Q. If you look at the last paragraph on page 4, it says,  
17 "Based on its review of the subject investments, and in  
18 reliance thereon, VRC believes that its concluded valuations  
19 represent fair value as of the valuation date."

20                  A. Um-hmm.

21                  Q. What does "fair value" mean?

22                  A. It's a definition, an accounting definition. It's willing  
23 buyer, willing seller, having all information, and arm's length  
24 transaction.

25                  Q. And what does "as of the valuing" mean? Why is a range

152 Mce2Pla1

153 Czapla - Direct

154 provided as of a certain valuation date?

155 A. The valuation date here was I believe December 31, 2004, so  
156 it's an opinion of value as of a particular date and time.157 THE COURT: Right above that it says "the fair value  
158 of each investment is ultimately determined in good faith by  
159 Platinum."

160 THE WITNESS: Yes, sir.

161 THE COURT: Do you know whether they are exercising  
162 good faith or not?163 THE WITNESS: I don't. We provide the opinion to help  
164 support -- in this case it was to support an audit. It was up  
165 to them in all of our engagements like this, it is ultimately  
166 the managers responsible for coming up with the final  
167 valuations.168 THE COURT: So my question was do you know whether  
169 they are exercising good faith or not?

170 THE WITNESS: I do not.

171 THE COURT: All right.

172 BY MS. MOSSE:

173 Q. Did VRC communicate directly with any Platinum personnel  
174 during the course of its engagement?

175 A. I believe so.

176 Q. Do you recall who at Platinum VRC communicated with?

177 A. I do not.

178 Q. Did VRC communicate directly with CohnReznick during the

Mce2Pla1

Czapla - Direct

1 course of this engagement?

2 A. We did.

3 Q. And did VRC receive documents from CohnReznick during the  
4 course of its engagement?

5 A. I don't remember.

6 Q. Did VRC have documents that it reviewed in connection with  
7 producing this report?

8 A. Who is "them," CohnReznick?

9 Q. Sorry?

10 A. Who is "them"?

11 Q. Did VRC have documents that it reviewed in order to produce  
12 this report?

13 A. We had documents, yes.

14 Q. Do you know where it got those documents from?

15 A. From Platinum.

16 Q. Directly from Platinum?

17 A. I don't recall.

18 Q. Was VRC free to ask for additional documents if it wanted?

19 A. Yes.

20 Q. And did VRC do that during the course of its engagement?

21 A. I don't recall.

22 Q. Can we turn, please, to page 10. What does this page  
23 reflect?

24 A. Excuse me? I missed the last part.

25 Q. What is reflected on this slide?

Mce2Pla1

Czapla - Direct

1 A. This is an overview of Golden Gate Oil and ultimately there  
2 is a valuation opinion or conclusion in the middle.

3 Q. Mr. Robson, can you zoom in on the valuation conclusions,  
4 please.

5 So is this the range of values that VRC provided for  
6 Platinum's investment in Golden Gate as of December 31, 2014?

7 A. That is correct.

8 Q. You talked before about providing ranges. Why is a low,  
9 mid, and high value provided?

10 A. It is just how we show it, how clients like to see it.

11 Q. Can we zoom out, please. If we look at the box "Investment  
12 Thesis and Risks" on the right side towards the top of the  
13 page, can we zoom in on that, please. What's an investment  
14 thesis?

15 A. It's an objective of the investor or Platinum, what they  
16 are trying to get out of the investment.

17 Q. And what's investment risk?

18 A. The challenges that may happen or may incur that may be  
19 negative on the investment.

20 Q. And these are all risks that VRC took into account when  
21 arriving at a range of values?

22 A. Yes.

23 Q. What's commodity price risk?

24 A. In this case oil, the risk that oil and gas prices change.

25 Q. And how was that a risk with respect to Platinum's

Mce2Pla1

Czapla - Direct

1 investment in Golden Gate?

2 A. They -- Golden Gate is an oil and gas exploration company.

3 Q. So what impact would a change in the price of oil --

4 A. They sell oil and gas, so it's -- if the price of oil and  
5 gas moves, then the economics of the business will change.

6 Q. What's execution risk?

7 A. That in this case it's oil and gas, that they successfully  
8 drill and extract oil and gas from the field.

9 Q. So execution risk is the risk of not being able to  
10 successfully drill or --

11 A. It's a general term, but it's how we perceive it in this  
12 case.

13 Q. And what is integration risk?

14 A. Here I'm not sure. I'm not sure what that meant for these  
15 guys.

16 Q. Do you have a general understanding of that term with  
17 respect to your experience in other investments?

18 A. It can mean a lot of different things. I don't know.

19 Q. Fair enough.

20 Can we zoom out, please? Can we zoom in, please, on  
21 the bottom section "Valuation Considerations and Conclusion  
22 Highlights."

23 I just want to briefly go over these four bullets with  
24 you.

25 The first one refers to VRC's reliance on three

Mce2Pla1

Czapla - Direct

1 industry standard market value approaches.

2 A. Yes.

3 Q. And the first one is a multiple to proved reserves. What  
4 does that mean?

5 A. Okay. I'm trying to be as eloquent as I can here. Proved  
6 reserves, it's an engineering term. It has the highest  
7 probability of success of being pulled out of the ground  
8 economically.

9 Q. The next one is a multiple to PV10. What does that mean?

10 A. So -- a multiple, to be clear, a multiple's value to  
11 something. In this case PV10 means present value 10. It is  
12 an -- from an engineering report, PV10 means present value 10  
13 at a 10 percent discount rate, so it's taking a stream of cash  
14 flows from an engine or reserves -- from reserves economic cash  
15 flows and discounting those cash flows back by a rate of 10  
16 percent.

17 Q. And what about the third bullet, a multiple to FY16 EBITDA?

18 A. That means fiscal year '16, or 2016, in this case EBITDA  
19 means earnings before interest, taxes, depreciation, and  
20 amortization. It's a proxy for a cash flow term.

21 Q. And --

22 A. Or earnings.

23 Q. The last sentence of that bullet reads, "We did not utilize  
24 a DCF analysis in our valuation due to lack of reliable  
25 individual cash flow projections for GGO." What does that

Mce2Pla1

Czapla - Direct

1 mean?

2 A. DCF means a discounted cash flow analysis. It's a standard  
3 valuation methodology which comes up with value looking at  
4 projections or cash flows from a company which we are saying we  
5 didn't have to do that type of analysis.

6 Q. Why did you look to fiscal year 16 for bullet three that we  
7 just reviewed?

8 A. I'm not sure. It's a forecast year. I'm not sure why that  
9 was chosen.

10 Q. The next bullet, which we don't need to review in detail,  
11 that describes VRC considering a change in oil prices, is that  
12 correct?

13 A. Yes.

14 Q. And this notes that there was a material decline in the  
15 price of oil beginning in October 2014?

16 A. That's correct.

17 Q. And the last sentence says, "The company revised down its  
18 2015-2017 forecast and Platinum reestimated P1 PV10 reserve  
19 values, using YE NYMEX forward strip pricing from over \$600  
20 million to just over \$400 million," what does that mean?

21 A. It means the company, based on lower oil prices, had their  
22 model -- changed their model where the value, internal  
23 valuation was lower.

24 Q. The next bullet refers to comparable publicly traded oil  
25 and gas exploration companies.

Mce2Pla1

Czapla - Direct

1 A. Um-hmm.

2 Q. What are comparable companies?

3 A. Comparable means similar companies to the subject company.

4 Q. And that's a factor that's taken into consideration when  
5 arriving at a range of value for an oil and gas asset?

6 A. Yes, we were trying to find similar companies to use as  
7 benchmarks for the valuation.

8 Q. And finally the fourth bullet refers to the high level of  
9 PUD reserves about 100 percent of proved reserves. What are  
10 PUD reserves?

11 A. I will try my best here. It stands for proven undeveloped,  
12 so it's an engineer term. It means they are in the ground but  
13 they are not known economically to be economic, so they are  
14 undeveloped. They are not yet developed.

15 Q. So this reflects that Golden Gate, about 100 percent of its  
16 proved reserve for these not yet proved to be economic  
17 undeveloped -- undeveloped reserves?

18 A. I shouldn't say economic. It means -- undeveloped means  
19 there is not flowing or drill -- there is not wells in the  
20 ground or actually flowing oil that could sell. It's an  
21 engineering term that they think they are there but they  
22 haven't been drilled yet.

23 Q. So VRC took that fact into account when arriving at its  
24 range of values for Platinum's investment in Golden Gate?

25 A. Yes.

Mce2Pla1

Czapla - Direct

1 Q. And this says that PUD reserves require high cap ex. What  
2 is cap ex?

3 A. Cap ex means capital expenditures.

4 Q. I would like to turn quickly to Northstar. That's on page  
5 17 of the report, please. Can we turn to 18, please.

6 Is this an investment summary slide for Northstar  
7 similar to the one that we just looked at for Golden Gate?

8 A. That's correct.

9 Q. And if you zoom in, please, Mr. Robson, on the "Security  
10 Valuation Conclusions" box, this reflects VRC's range of low,  
11 mid, and high values for Platinum's investment in Northstar as  
12 of December 31, 2014, is that right?

13 A. Yes.

14 Q. And again, VRC provided a low, mid, and high range of  
15 values?

16 A. Yes.

17 Q. Can we zoom out, please. There is an "Investment Thesis  
18 and Risks" box similar to the one that we looked at before.  
19 Were the same investment theses and risks generally considered  
20 by VRC with respect to its valuation of Northstar as it  
21 considered for Golden Gate?

22 A. The way it is stated it looks so, it looks to be.

23 Q. There is a reference in the second thesis point to  
24 attractive entry valuation. Do you know what that is referring  
25 to? And maybe you can zoom out.

Mce2Pla1

Czapla - Direct

1 A. Yeah, I'm not sure.

2 Q. If you look at the point "investment," the second section  
3 from the top, does this help to provide some context for what  
4 attractive entry valuation meant?

5 A. Yes. It appears it is stating that they purchased the  
6 assets from a company called NGP that was nearing the end of  
7 its fund life. It says they were motivated to divest their  
8 assets because of that.

9 Q. Zoom out please. I believe you said, Mr. Czapla, that this  
10 report was used in connection with CohnReznick's audit of  
11 Platinum's financial statements, is that right?

12 A. Yes.

13 Q. What was your understanding of how this report would be  
14 used?

15 A. I don't know. I don't know how they were going to use it  
16 specifically.

17 Q. Is this the only valuation report that VRC was engaged to  
18 provide by CohnReznick in connection with its audit of  
19 Platinum.

20 A. Well, there is two. There is Northstar and the Golden Gate  
21 if that's what you mean yet.

22 Q. In this single document?

23 A. Yes.

24 Q. Is there another report like this or is this it?

25 A. I don't believe so.

Mce2Pla1

Czapla - Direct

1 MS. MOSSE: Thank you, Mr. Czapla.

2 THE COURT: Cross-examination.

3 (Continued on next page)

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MCECpl2

Czapla - Cross

1                   MR. GLUCK: Could I trouble defense counsel to call up  
2 763, which was just on the screen.

3 CROSS-EXAMINATION

4 BY MR. GLUCK:

5 Q. You were retained to do a limited scope valuation of  
6 certain of PPVA's assets?

7 A. Yes.

8 Q. Limited scope means the analysis you conducted was limited  
9 as described in your opinion?

10 A. I believe so.

11 Q. If you can speak into the microphone.

12                   You didn't conduct any independent reviews of the  
13 management of the assets, did you?

14 A. No.

15 Q. You didn't conduct any independent reviews of the portfolio  
16 companies that you were analyzing balance sheets, i.e.,  
17 Northstar, i.e., Golden Gate?

18                   MS. MOSSE: Objection. Form. Compound.

19                   MR. GLUCK: Withdrawn.

20 Q. You didn't conduct any independent review of portfolio  
21 company Golden Gate's balance sheet, did you?

22 A. No.

23 Q. You didn't conduct any independent review of portfolio  
24 company Northstar's balance sheet, did you?

25 A. No.

155 MCECpl2

Czapla - Cross

1 Q. You didn't contact any company creditors, did you?

2 A. No.

3 Q. Did you review its cash flows independent of the  
4 information provided to you by Platinum Management?

5 A. No.

6 Q. Do you know why you weren't retained to do a valuation on  
7 all of PPVA's assets?

8 MS. MOSSE: Objection.

9 THE COURT: Sustained.

10 MR. GLUCK: Please turn to page 4.

11 Q. Does page 4 represent the limited scope engagement that we  
12 just described?

13 A. Does it represent the engagement?

14 Q. Is this a statement of the limited scope of the engagement?

15 A. It's a statement of the scope, what we did.

16 Q. Do you recall interacting with Mr. Joe SanFilippo at  
17 Platinum?

18 A. No.

19 MR. GLUCK: Page 5, please.

20 Q. Please read the second paragraph and tell the jury what it  
21 means.

22 A. The one that starts financial statements?

23 Q. Yes. Would you please read it.

24 A. I'm sorry?

25 Q. Could you please read it to the jury.

MCECpla2

Czapla - Cross

1       A. Financial statements and other related information provided  
2       by our clients or their representatives in the course of this  
3       investigation have been accepted, without verification, as  
4       fully and correctly reflecting the business conditions and  
5       operating results for the respective periods, except as  
6       specifically noted herein, of each relevant entity. All other  
7       information presented during the investment periods represents  
8       deal diligence performed by Platinum.

9       Q. So you just accepted what they said without any  
10      verification?

11                   MS. MOSSE: Objection.

12                   THE COURT: Overruled.

13       A. Yes.

14       Q. And all of the diligence was done by Platinum?

15       A. Yes.

16       Q. Could you please read the final paragraph, saying we do not  
17       provide assurance. Third to final, we do not provide assurance  
18       on the achievability.

19       A. You want me to read that?

20       Q. Yes.

21       A. We do not provide assurance on the achievability of the  
22       results forecasted by our client or any of the subject entities  
23       on the performance of the subject entities because events and  
24       circumstances frequently do not occur as expected; differences  
25       between actual and expected results may be material; and

1 MCECpla2

Czapla - Cross

1 achievement of the forecasted results is dependent on actions,  
2 plans, and assumptions of management.

3 Q. You didn't do any due diligence on these companies?

4 MS. MOSSE: Objection. Asked and answered.

5 MR. GLUCK: Excuse me.

6 Q. You didn't independently verify the revenues of these  
7 companies, did you?

8 A. No.

9 Q. Did you confirm their expenses?

10 A. No.

11 Q. Did you visit oil fields?

12 A. No.

13 Q. Did you interview any of the petroleum --

14 A. No.

15 Q. Did you meet with any of the management?

16 A. Of the companies?

17 Q. Platinum companies.

18 A. No.

19 Q. In particular, did you ever meet with a gentleman named Jed  
20 Latkin?

21 A. No.

22 MR. GLUCK: Please turn to page 10.

23 Q. On thesis, were you aware that directional and horizontal  
24 drilling had already been attempted?

25 A. It's an oil and gas well, I assume it's been attempted.

MCECpla2

Czapla - Cross

1 Q. In the last year.

2 A. What's your question? Specifically in the last year?

3 Q. Yeah. In the past year, did this --

4 A. Have they -- you're asking the last year. So, to be  
5 specific, so 2014 is when we did the valuation. So you're  
6 asking --

7 Q. I'll be very specific. Are you aware that directional and  
8 horizontal drilling did occur within 2013 and 2014?

9 A. I'm not sure. I don't remember.

10 Q. Were you told that they were pumping up water?

11 MS. MOSSE: Objection.

12 THE COURT: Overruled.

13 A. I don't believe so.

14 Q. Were you told that they had no sellable oil?

15 A. I don't believe I was told that.

16 Q. Is prolific past production in these fields, what's that a  
17 reference to?

18 A. It means historically, prolific means does well. It's  
19 saying that those fields in the past, prolific defining  
20 prolific as doing well.

21 Q. You're talking about when these same fields were drilled in  
22 the '80s?

23 A. I don't know when it was.

24 Q. This report is a valuation date of 12/31/14, issued in  
25 2015; is that right?

MCECpl2

Czapla - Cross

1 A. That's correct.

2 Q. Who was the new management team?

3 A. I'm sorry. I missed that.

4 Q. Who was the new management team?

5 A. I have no idea.

6 Q. Was there a management team?

7 A. At Platinum or Golden Gate?

8 Q. At Golden Gate.

9 A. I don't know.

10 Q. Were you aware of whether they were operating, Golden Gate?

11 A. Meaning as a going concern?

12 Q. Yeah.

13 A. Our assumption was they were going concern.

14 Q. That's your assumption?

15 A. Uh-huh.

16 THE COURT: Excuse me, sir. Put page 11 on the  
17 screen.

18 By the way, is this the size of the actual report?

19 THE WITNESS: Terms of number of pages or --

20 THE COURT: In terms of the size of the print.

21 THE WITNESS: I don't know.

22 THE COURT: So, on page 11 towards the bottom under  
23 the heading financial performance review, do you see that?

24 THE WITNESS: Yes.

25 THE COURT: It says historical performance was not

154 MCECpl2

154 Czapla - Cross

154 provided. I'll stop there. What does that mean?

155 THE WITNESS: I'm presuming -- I don't recall  
156 specifically, but we may not have had financials, sellable  
157 financials.

158 THE COURT: For a prior year?

159 THE WITNESS: Yes.

160 THE COURT: Sentence goes on, but was not deemed  
161 relevant for GGO. What's GGO?

162 THE WITNESS: I believe that's an acronym for Golden  
163 Gate Oil. That's the subject company.

164 THE COURT: As the management team was replaced in  
165 mid-2014 after drilling a couple wells that were well over  
166 budget.

167 Do you see that?

168 THE WITNESS: Yes.

169 THE COURT: So you didn't know how prior management  
170 had done it because historical performance was not provided,  
171 and the only thing you knew about the new management was that  
172 they came in in the middle of this year after there was a  
173 problem with two wells going well over budget, yes?

174 THE WITNESS: Yes, that's what it looks like from  
175 here.

176 THE COURT: So why did that not cause you to cause you  
177 concern?

178 THE WITNESS: I don't know if it was concern. Just

MCECpla2

Czapla - Cross

1 what we base the valuation on is a more forward look. There  
2 were engineering reports that were done on the field that we  
3 rely more on in terms of as we state, you know, we can't opine  
4 on the execution strategy if we don't know.

5 THE COURT: All right.

6 MR. GLUCK: Could you please highlight credit profile  
7 and liquidity.

8 BY MR. GLUCK:

9 Q. Could you please read that out loud.

10 A. It is our understanding that the debt is to a related  
11 Platinum entity. We presume the debt is in good standing. We  
12 note that GGO's PV-10 provides generous coverage to the debt,  
13 even at 12/31/2014 strip pricing, which was \$324 million. We  
14 also presume that Platinum will provide the necessary funding  
15 for current working capital and future CapEx needs to meet the  
16 projections.

17 Q. Why did you presume that that is in good standing?

18 A. Because otherwise it wouldn't be a going concern.

19 Q. Did someone tell you that?

20 A. I believe so, if we're stating here our assumption was that  
21 the business was a going concern and it would execute on the  
22 strategy for which the engineering report was based on.

23 Q. Do you know what Beechwood is?

24 A. No.

25 Q. You referred to an engineering report that formed the basis

155 MCECpla2

155 Czapla - Cross

155 of this PV-10. Do you remember who prepared that report?

156 A. I do not.

157 Q. Do you recall reviewing an NSAI report on Golden Gate Oil?

158 A. I don't recall.

159 Q. Would it help your recollection if I were to bring an NSAI  
160 report on Golden Gate Oil up?

161 A. It's too long ago. I wouldn't remember.

162 Q. How many engineering reports did you have?

163 A. I don't remember.

164 MR. GLUCK: The last sentence of company outlook:

165 Also, given the land has already been vertically drilled. Do  
166 you mind highlighting that, Mr. Parson.

167 Q. If you didn't investigate any expenses, why were you saying  
168 that the cost per well would be lower?

169 A. That could have been a statement from the company or  
170 provider from the company to us.

171 Q. Did you have an understanding of Platinum's financials?

172 A. No.

173 Q. But you presumed that Platinum would provide the necessary  
174 funding for current working capital and future CapEx needs to  
175 meet projections?

176 A. That's correct.

177 Q. Did you presume that because if a third party were to come  
178 in and provide CapEx funding, PPVA's funding would be diluted?

179 MS. MOSSE: Objection.

MCECpl2

Czapla - Cross

1                   THE COURT: Sustained.

2                   Let me ask you, how could you presume that Platinum  
3 would provide adequate financing if you didn't know whether or  
4 not Platinum itself was undergoing liquidity problems?

5                   THE WITNESS: Is that a question for me, your Honor?

6                   THE COURT: Yeah.

7                   THE WITNESS: When we're engaged, we're not asking --  
8 we're not doing diligence on the manager. We're asked to do --  
9 we were asked to perform a valuation on Golden Gate with  
10 certain information that's provided. If we're being asked to  
11 do that, we're assuming it's a going concern.

12                  THE COURT: So if I understand what you're saying, are  
13 you saying we're told by Platinum that they will do X, Y, and  
14 Z, and we assume that to be true in doing our analysis?

15                  THE WITNESS: That's correct.

16                  THE COURT: How much more do you have?

17                  MR. GLUCK: Northstar and that's it.

18                  THE COURT: Okay.

19 BY MR. GLUCK:

20 Q. This capital structure table, was that provided to you by  
21 Platinum, as well?

22 A. Yes.

23 Q. You have no independent basis of capital structure of  
24 Golden Gate?

25 A. No, we don't do any forensic accounting on this.

MCECpla2

Czapla - Cross

1 MR. GLUCK: If you turn to page 15, please.

2 Q. Did Golden Gate have any revenue in 2015?

3 A. I have no idea. The valuation was as of 2014.

4 Q. Earnings before interest, EBITIA, what does that mean?

5 A. Earnings before interest, taxes, interest, and  
6 amortization.

7 Q. How did you calculate EBITIA in 2014?

8 A. The negative 2.9, is that what you're referencing? That  
9 would have been provided.

10 Q. Who selected these comparables?

11 A. Our team.

12 Q. Could you describe your affiliation to CohnReznick?

13 A. There's no affiliation.

14 Q. There's none?

15 A. It's just a relationship.

16 Q. What is that relationship?

17 A. Just someone we know. Business relationship.

18 Q. And CohnReznick relied on this to audit PPVA?

19 A. I don't know what all their procedures were as part of  
20 their audit.

21 Q. But they told you they were going to rely on this to audit?

22 A. They didn't tell me anything. They engaged us to provide  
23 opinion of value.

24 Q. I'm sorry. Didn't you testify earlier this morning that  
25 they engaged you for their audit, PPVA?

MCECpla2

Czapla - Cross

1 A. I don't know what our engagement letter says specifically.

2 Q. You don't remember?

3 A. No.

4 MR. GLUCK: Turn to page 4, please. The fair value  
5 sentence, if you wouldn't mind, Mr. Parson, highlighting that.

6 Q. They told you they were going to be using this for their  
7 audit; right?

8 A. It appears so, yes.

9 Q. Why doesn't this valuation represent an investment  
10 recommendation or investment advice in any manner whatsoever?

11 A. That's not what the scope of this is for. The scope was to  
12 provide an opinion of fair value for the stated purpose for  
13 financial reporting.

14 Q. Can this report be relied on in any manner whatsoever?

15 MS. MOSSE: Objection.

16 THE COURT: Sustained.

17 Q. You were also tasked to review an investment called  
18 Northstar?

19 A. Yes.

20 Q. If I was to ask you all the same questions about whether  
21 you contacted management, reviewed the independent financials,  
22 would all of those answers be the same as you gave for Golden  
23 Gate also with respect to Northstar?

24 A. Yes, sir.

25 Q. Were you informed that the acquisition referred to was from

MCECpla2

Czapla - Cross

1 Black Elk?

2 MS. MOSSE: Objection.

3 THE COURT: Overruled.

4 A. I'm not sure. I don't understand your question.

5 Q. Can you please describe your understanding of this  
6 Black Elk acquisition.7 A. I don't recall. You want me to read in? I mean, it's too  
8 long ago to give the details.9 Q. Did you have an understanding of what Black Elk sold its  
10 other assets for?

11 A. Do I have an understanding?

12 Q. Did you.

13 A. I don't recall.

14 Q. Did you do any due diligence on Black Elk?

15 A. No.

16 Q. Did you speak with Black Elk's CEO?

17 A. No.

18 Q. Were you told that these assets were actually a liability?

19 A. No.

20 MS. MOSSE: Objection.

21 MR. GLUCK: I'll rephrase.

22 THE COURT: Given the answer, I'll let it stand.

23 MR. GLUCK: Sustained?

24 THE COURT: No. I said I would let it stand.

25 MR. GLUCK: Let it stand.

MCECpl2

Czapla - Cross

1 Q. Were you told these assets were actually a liability?

2 MS. MOSSE: Objection.

3 THE COURT: Overruled.

4 A. I don't recall.

5 THE COURT: If you had been told that, would that have  
6 changed your analysis?

7 THE WITNESS: From what I recall, the way we handled  
8 Black Elk, we treated it as an asset. It was \$65 million.  
9 That's how we added it into the valuation.

10 Q. Do you know what an plugging and abandonment liability is?

11 A. Yes.

12 Q. What is it?

13 A. It's generally a term for -- mostly used in the offshore  
14 drilling area. It could be anywhere, actually. I shouldn't  
15 say just offshore. When you finish a well, environmentally,  
16 you have to clean it up, plug it up.

17 Q. Did you evaluate whether the assets being transferred from  
18 Black Elk to Northstar had plugging abandonment liabilities  
19 associated with them?

20 A. I don't recall.

21 Q. Did you evaluate whether there was any litigation  
22 concerning Black Elk?

23 A. I don't recall that.

24 Q. Did you receive any engineering reports concerning  
25 Northstar?

MCECpla2

Czapla - Cross

1 A. I believe we did.

2 Q. PV-10?

3 A. You'd have to flip to the next pages. One more. Yes,  
4 those -- this page is the reserve figures.

5 Q. Who provided that report?

6 A. I can't see. It may be in the footnotes, but I can't read  
7 them.

8 Q. Doesn't identify the report, just says provided by PPVA; is  
9 that right?

10 A. It says PPVA provided.

11 MR. GLUCK: Can you please highlight the last page,  
12 Mr. Parson, expected hold period. Page 18. Expected exit/hold  
13 period.

14 Q. Can you explain what this is?

15 A. It's saying PPVA's exact exit strategy and hold period for  
16 the investment are unknown.

17 Q. Why did they need an exit strategy?

18 MS. MOSSE: Objection.

19 Q. Why are you commenting about this?

20 THE COURT: He withdrew the question, so the question  
21 you can answer is why were you commenting on this.

22 A. I don't recall specifically why we were commenting on it.

23 MR. GLUCK: Please highlight the investment overview.

24 Q. You got these numbers from Platinum?

25 A. There was really no numbers there. It's just a date and

MCECpla2

Czapla - Cross

1 what they own. But, yes, it's says 100 percent, we would have  
2 got that from them.

3 Q. Why does it say N/A next to PPVA investment cost?

4 A. We didn't have it.

5 Q. But in your investment thesis, you say in tract of entry  
6 valuation. How can you say that if you didn't know what the  
7 investment cost is?

8 A. We must not have had the specific amount.

9 Q. There's a star. It says information from PPVA memo. Did  
10 you get a memo?

11 A. I don't recall.

12 Q. What debt was associated with Northstar?

13 A. I'm sorry. I missed that.

14 Q. Northstar made bonds outstanding?

15 A. I don't remember.

16 Q. Secured debt?

17 A. I don't know.

18 Q. Did you receive periodic oil and gas update emails from  
19 PPVA?

20 A. Not that I recall. We did one valuation, so we wouldn't  
21 have been asked.

22 Q. So over the course of your work, you wouldn't receive  
23 here's what's going on with Golden Gate, here's what's going on  
24 with Northstar emails from PPVA, Platinum?

25 A. Not that I recall.

153 MCECpl2

154 Czapla - Cross

155 Q. When did you become aware that Golden Gate and Northstar's  
156 wells were shutting?

157 MS. MOSSE: Objection.

158 THE COURT: Did you become aware of that?

159 Q. Did you.

160 A. Not that I know of, no.

161 Q. There's a third asset on this valuation. Can you tell us  
162 about it.

163 A. I don't recall which one is it.

164 Q. Golden Globe?

165 A. Golden Globe, that was -- the Judge was asking where we  
166 delivered an assurance opinion. I don't recall exactly what  
167 that was.

168 Q. Never even existed; right?

169 MS. MOSSE: Objection.

170 Q. Do you know if there was ever a company called Golden  
171 Globe?

172 A. I don't recall. I mean, I don't know. I didn't do a legal  
173 analysis. We didn't do a legal analysis.

174 MR. GLUCK: Thank you.

175 THE COURT: Redirect.

176 MS. MOSSE: Very briefly.

177 Can we put up, please, of the exhibit that we were  
178 just looking at, page 12, DX 763.

179 REDIRECT EXAMINATION

MCECpl2

Czapla - Redirect

1 BY MS. MOSSE:

2 Q. Mr. Czapla, you were asked about reserve reports that you  
3 reviewed for Golden Gate. Do you recall that?

4 A. Yes.

5 Q. And you were asked if you recalled who the engineer was  
6 that produced the reserve report?

7 A. Yes.

8 MS. MOSSE: Can we zoom in, please, Mr. Robson, on the  
9 reserve statistics box and the source note beneath it.

10 Q. Do you see there the source of the reserve report?

11 A. Yes, for Golden Gate, it was DeGolyer & McNaughton.

12 Q. Is there a reference here to an initial report as of  
13 December 31, '13, and then an update to the figures?

14 A. Yes.

15 Q. And do you recall why the reserve report figures were  
16 updated?

17 A. There were two different periods.

18 Q. And there's a reference to forward 12/31/14 strip pricing.  
19 Do you know what that means?

20 A. Yeah, that's saying that was the -- that means the oil and  
21 price curve as of 12/31/2014 going forward, as of that date.

22 Q. So the reserve report was updated to take that into  
23 account?

24 A. Yes. So it was updated from -- that note reads from  
25 12/31/2013, to bring it forward to 12/31/2014 using 12/31/2014

MCECpl2

Czapla - Redirect

1 for the prices.

2 Q. You were asked if you did any diligence on Platinum or on  
3 the portfolio companies. Do you recall that?

4 A. Yes.

5 Q. Was the focus of your valuation on the reserves, on the  
6 value of the reserves?

7 MR. GLUCK: Objection.

8 THE COURT: I'll allow it.

9 A. Yeah, it was based on this -- a lot of it was based on  
10 these reserve reports, the data in these reserve reports, yes.

11 Q. Did you just rely on -- you referred to PV10 value. Did  
12 VRC just rely on the PV-10 value in the reserve reports or did  
13 it apply certain discounts to that value?

14 A. I don't recall. You'd have to reference the pages.

15 MS. MOSSE: We looked before at page 10. Can we turn  
16 to that, please.

17 Q. And under valuation considerations, the first bullet refers  
18 to a multiple to prove reserves and a multiple to PV-10. Do  
19 you see that?

20 A. Yes.

21 Q. What's a multiple?

22 A. It means the value, it's a -- it's taking a number and  
23 applying it to that base, that denominator in this case, the  
24 first one, prove the reserves, we apply a multiplier to that to  
25 get a value indication.

MCECpl2

Czapla - Redirect

1                   THE COURT: So in connection with reserves, would you  
2 put on the screen page 12. And there's something called  
3 reserve overview. Do you see that?

4                   THE WITNESS: Yes.

5                   THE COURT: It says GGO's reserves are almost  
6 exclusively made up of oil and PUD – can you remind us what PUD  
7 means.

8                   THE WITNESS: That means proven undeveloped.

9                   THE COURT: – reserves, meaning the CapEx requirement  
10 is materially higher. What is that?

11                  THE WITNESS: It means capital expenditures. It means  
12 that you have to spend a lot to get the reserves out of the  
13 ground.

14                  THE COURT: And then it says it is our understanding  
15 that Platinum will fund the necessary CapEx, or find  
16 alternative sources of funding. Do you see that?

17                  THE WITNESS: Yes, sir.

18                  THE COURT: So if that was not true, you would have  
19 put a much lower value on the reserves, yes?

20                  THE WITNESS: It may be just a different propose  
21 altogether.

22                  THE COURT: Go ahead.

23 BY MS. MOSSE:

24 Q. Did the fact that Golden Gate's reserves were made up  
25 almost exclusively of PUD or proven undeveloped reserves, was

151 MCECpla2

Czapla - Redirect

1 that something that VRC took into account when arriving at its  
2 range of values?

3 A. Yes.

4 MS. MOSSE: No further questions.

5 THE COURT: Anything else?

6 Thank you very much. You may step down.

7 THE WITNESS: Thank you.

8 (Witness excused)

9 THE COURT: And we'll give the ladies and gentlemen  
10 their midmorning break, 15 minutes.

11 (Continued on next page)

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MCECpla2

Czapla - Redirect

1 (Jury not present)

2 THE COURT: Please be seated. While I continue to be  
3 intrigued by defense counsel's decision to call these kinds of  
4 witnesses and plaintiffs' opposition to these witnesses being  
5 called, but, of course, strategy is not my department, it's  
6 yours.

7 Who is the next witness?

8 MS. MOSSE: Keith McGowan of BDO.

9 THE COURT: All right. We'll see you in 15 minutes.

10 (Continued on next page)

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Mce2Pla3

1                   THE COURT: Let's get the next witness on the stand.  
2 Let's bring in the jury. And I am looking forward to your  
3 letters in 27 minutes.

4                   (Continued on next page)

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Mce2Pla3

McGowan - Direct

1 (Jury present)

2 THE DEPUTY CLERK: Jury entering the courtroom.

3 THE COURT: Please be seated. Call your witness.

4 MS. MOSSE: We call Keith McGowan.

5 KEITH McGOWAN,

6 called as a witness by the defendant,

7 having been duly sworn, testified as follows:

8 THE COURT: Counsel.

9 DIRECT EXAMINATION

10 BY MS. MOSSE:

11 Q. Good morning, Mr. McGowan.

12 A. Good morning.

13 Q. Where do you currently work?

14 A. BDO U.S.A.

15 Q. How long have you worked at BDO?

16 A. I actually have done two stints with the company. I  
17 started in '85 and left in '97 and returned in 2008 and still  
18 reside there.

19 Q. You were at BDO between the years 2012 and 2015?

20 A. Yes.

21 Q. What's your current title?

22 A. I'm an audit partner in the assurance practice.

23 Q. And were you an audit partner also in the years 2012 to  
24 2015?

25 A. Yes, I was.

Mce2Pla3

McGowan - Direct

1 Q. What type of company is BDO?

2 A. BDO is an accounting and consulting firm.

3 Q. How many employees does it have?

4 A. It's a good question. I don't know offhand. It's a global  
5 firm.

6 Q. Are you based out of the New York office?

7 A. Yes, I'm based out of the New York office.

8 Q. How many employees are in the New York office?

9 A. Again, I wouldn't know that number. I could tell you  
10 approximately in the asset management group, which I am the  
11 head of, it's approximately 60 professionals.

12 Q. Is there a valuation group within BDO?

13 A. Yes, there is.

14 Q. And are they based out of New York also or are they global?

15 A. I mean, they have -- they are professionals all around the  
16 country, so they are based in New York, but they are all over.

17 Q. And in connection with your work as an audit partner, do  
18 you have occasion to work with BDO's valuation group?

19 A. All the time.

20 Q. What's your highest level of education?

21 A. I graduated from Adelphi with a bachelor's degree in  
22 accounting.

23 Q. Do you have any professional licenses?

24 A. I am a CPA.

25 Q. Are you familiar with a company called Platinum Partners

Mce2Pla3

McGowan - Direct

1 Value Arbitrage, or PPVA?

2 A. Yes, I am.

3 Q. Did there come a time that BDO was engaged to provide  
4 independent auditing services to PPVA?

5 A. Yes, we were the auditors for a period of time.

6 Q. Do you recall what that period of time was when BDO was  
7 first engaged?

8 A. I don't. They were a client before I rejoined the firm in  
9 2008, and then our last year we were engaged to audit for the  
10 year ended December 31, 2013.

11 Q. So at least to your knowledge from 2008 through the year  
12 ended December 31, 2013, BDO was PPVA's independent auditor.

13 A. That is correct.

14 Q. And did you personally work on the PPAV engagement?

15 A. I did.

16 Q. What was your role?

17 A. I was the engagement audit partner.

18 Q. Focusing specifically on BDO's audit of PPVA's financial  
19 statements for the year ended 2013, were you the engagement  
20 partner for that audit?

21 A. Yes, I was.

22 Q. And you said that in your role as engagement partner you  
23 have occasion to work with BDO's valuation group all the time.  
24 Was that the case with respect to BDO's audit of PPVA's  
25 financial statements for the year end December 31, 2013?

Mce2Pla3

McGowan - Direct

1 A. Yes, it was.

2 Q. In addition to you as engagement partner, were other  
3 members of BDO's audit team involved in the 2013 audit?

4 A. Yes.

5 Q. How many members?

6 A. I mean, we had a couple of staff that I recall, senior --

7 we had at least -- I don't remember if he was a senior manager

8 or director at the time. We also had a director, as well as

9 certain members of BDO Cayman office were involved as well.

10 That's all, not including the valuation team that was also part  
11 of the audit process.

12 Q. I was just going to ask you about the valuation team. So

13 how many members of BDO valuation team were involved in the

14 2013 audit?

15 A. Again, I don't remember offhand. I'm sure they had some  
16 people assisting with some of the valuation work. I recall at  
17 least four.

18 Q. Can you just describe at a high level how the audit team  
19 interacts with the valuation group with respect to an audit or  
20 how it did in particular with respect to the audit of PPVA's  
21 financial statements for 2013?

22 A. Sure. So we are engaged to opine on -- to opine and give  
23 reasonable assurance that the financial statements are free of  
24 material misstatement. And so as part of that process, we  
25 evaluate the areas of risk and decide what those procedures

Mce2Pla3

McGowan - Direct

1 should be.

2           When you look at an investment company, generally one  
3 of the areas that we would focus on would be the fair value of  
4 the investment portfolio which they hold. In the case where  
5 you have what is referred to as level 3 assets, which means  
6 they are at the bottom of the chart where the inputs that drive  
7 the valuation oftentimes are unobservable, in those cases, we  
8 generally ask for our valuation group to assist the audit team,  
9 and their primary focus is to evaluate the methodologies and  
10 the assumptions and to assist us in determining a reasonable  
11 range of fair value for what those level 3s might be.

12           And then our job, as part of the audit team, is, you  
13 know, we are responsible for evaluating the adequacy of the  
14 valuation specialist's work and then there is various things  
15 that we would do to accomplish that goal.

16 Q. You referred to level 3 assets being on the bottom of the  
17 chart. What do you mean by that?

18 A. Well, it's based on the observability. So there are, you  
19 know, three levels that are defined in the guidance. There are  
20 level 1 assets which are the most observable, and so if you  
21 have never, you know, say, taken a look to see what Yahoo! or  
22 Facebook or Google are worth, you can easily determine what the  
23 fair value or the price of those securities are worth. And  
24 then there is what's called level 2 assets which have still a  
25 level of observability, but not the same level as level 1. And

Mce2Pla3

McGowan - Direct

1 then finally there are level 3 assets which the primary drivers  
2 of determining the value are what's called the inputs that go  
3 into driving the value are unobservable, so you can't look them  
4 up on the Internet or things of that nature.

5 Q. Did PPVA have a high concentration in level 3 assets?

6 A. Yes, they did.

7 Q. Can we pull up, please, DX 569. This is already in  
8 evidence. Can we turn to page 3, please.

9 Mr. McGowan, is this BDO's audit report that it issued  
10 in connection with the audit of PPVA's financial statements for  
11 2013?

12 A. Yes, it is.

13 Q. If you look at the line above "opinion" at the bottom, can  
14 you highlight that, please, or blow it up, the -- not the  
15 signature, the line above "opinion," please. Thank you.

16 BDO writes, "We believe that the audit evidence we  
17 have obtained is sufficient and appropriate to provide a basis  
18 for our audit opinion." What is audit evidence?

19 A. Audit evidence is all the information that we collect as  
20 part of the audit process that we utilize when we are  
21 determining whether or not either the accounting is right or in  
22 this particular case we are focused on investments, whether or  
23 not the fair values are within a range of reasonableness, you  
24 know, whether or not the investments themselves actually exist.  
25 It's really a culmination of audit evidence that we process and

Mce2Pla3

McGowan - Direct

1 include in our files before we issue the audit opinion.

2 Q. What are audit work papers?

3 A. Audit work papers is exactly that; it's the culmination of  
4 all the work that we have done, which is then contained in our  
5 file.

6 Q. Can we look at the opinion paragraph, please? And does  
7 this reflect BDO's opinion on Platinum's financial statements  
8 for the year ended 2013?

9 A. Yes, it does.

10 Q. And what was BDO's opinion?

11 A. Well, you can see here that we issued what's referred to as  
12 an unqualified opinion. And so we had determined that we  
13 thought that the financial statements presented fairly in all  
14 material respects their financial position and the consolidated  
15 statements of operations, changes in partners' capitals and  
16 cash flows in accordance with generally accepted accounting  
17 principles of the United States.

18 Q. When reference is made to the consolidated financial  
19 statements, does that include the financial statements and any  
20 footnotes or disclosures that accompany the financial  
21 statements?

22 A. Yes, it does.

23 Q. Can we pull up, please, DX 576. Is this an example of an  
24 audit work paper?

25 A. Yes.

Mce2Pla3

McGowan - Direct

1 MS. MOSSE: We offer this.

2 MR. GLUCK: No objection.

3 THE COURT: Received.

4 (Defendant's Exhibit 576 received in evidence)

5 BY MS. MOSSE:

6 Q. This document is entitled "Engagement Team Discussion." Do  
7 you see that?

8 A. Yes.

9 Q. What does this reflect?

10 A. The engagement team discussion is a document where we  
11 document the engagement team's overall discussion around or  
12 related to the audit, our areas of focus, our areas defined as  
13 areas of risk.

14 Q. What's the purpose of that discussion?

15 A. It's really to bring together the entire engagement team to  
16 ensure that the engagement team as a whole understands how we  
17 are going to go about the audit, the steps that we are going to  
18 take to mitigate the potential for a material misstatement.

19 Q. Can we turn, please, to page 6. Can you pull out the text  
20 in blue, please.

21 This reflects that the BDO audit team will assess the  
22 fair value of level 3 investments and this area of the master  
23 fund audit is considered a primary risk area. What does that  
24 mean?

25 A. Well, we identify risk of between what we refer to as risk

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1 of material misstatement and those of normal risk. We had  
2 assessed this as an area of a risk of material misstatement.

3 Q. And --

4 A. So in other words it is a higher level of risk.

5 Q. And once BDO accesses something as a higher level of risk,  
6 does it focus on that as part of its audit?

7 A. Yes, it does.

8 Q. What's professional skepticism?

9 A. Well, throughout the audit process, we are required to keep  
10 a level of professional skepticism, so that entails, you know,  
11 evaluating information for management's bias to determine  
12 whether or not the information has anything that might lend an  
13 answer that we think is questionable.

14 Q. Was the fair value of PPVA's level 3 investments a focus of  
15 BDO in connection with its 2013 audit?

16 A. Yes, it was.

17 Q. Continuing in this paragraph, there is a reference to you.  
18 Do you see that it says "Keith McGowan" -- well, "in addition  
19 to Bob Simon's general review, engagement partner Keith McGowan  
20 will review the valuation work papers."

21 A. Yes.

22 Q. What are valuation work papers?

23 A. That's all the support around our valuation of the fair  
24 value assessments related to the investment portfolio.

25 Q. And did you in fact review valuation work papers in

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1 connection with the 2013 audit?

2 A. Yes, I did.

3 Q. Can we pull up DX 602, please. Is this another example of  
4 a BDO work paper?

5 A. Yes. It was in our files.

6 MS. MOSSE: We offer this.

7 MR. GLUCK: It is already in evidence.

8 THE COURT: All right. If it is already in evidence,  
9 it is already in evidence.

10 MS. MOSSE: I don't believe this -- we had an  
11 agreement yesterday with respect to certain --

12 THE COURT: All right. It is received.

13 MS. MOSSE: Thank you.

14 (Defendant's Exhibit 602 received in evidence)

15 BY MS. MOSSE:

16 Q. There is a note at the top. Was this note added by BDO?

17 A. Yes.

18 Q. And it reads, "These Sterling Valuation memos are for  
19 information purpose only." What does that mean?

20 A. That means we didn't rely on the information included  
21 within the report.

22 Q. BDO did its own valuation analysis independent of the work  
23 that Sterling did?

24 A. Yes, as well as doing work on the management valuations as  
25 well.

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1 Q. Can we pull up DX 577, please.

2 Is this another one of BDO's work papers?

3 A. Yes.

4 MS. MOSSE: We offer it.

5 MR. GLUCK: No objection.

6 THE COURT: Received.

7 (Defendant's Exhibit 577 received in evidence)

8 BY MS. MOSSE:

9 Q. You see the red box at the bottom, Mr. McGowan?

10 A. Yes.

11 Q. Does that indicate your electronic signature?

12 A. Yes, it does.

13 Q. What is this? This document is entitled "FASB ASC 820

14 (SFAS 157) Review Report."

15 A. So this was the report that we receive from the valuation  
16 specialist within BDO when they have completed their valuation  
17 assessments along the lines of what we have asked them to do.  
18 So this report encompasses their discussion around the  
19 investments and their conclusions.

20 Q. And does your signature on this report -- and we can pull  
21 out the under "conclusions of the audit engagement team." Does  
22 your signature on this report reflect your conclusions, as this  
23 says, that the valuations assessed in this review report by  
24 BDOC appear reasonable?

25 A. Yes.

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1 Q. And BDOC, BDO Consulting, is that the valuation group that  
2 we have been talking about?

3 A. That is correct.

4 Q. Can we turn to page 4, please. If you look at the last  
5 sentence of the first paragraph in the large box, there is a  
6 reference to BDO Consulting performing sensitivity analysis,  
7 which I think is a term you referred to before. What's a  
8 sensitivity analysis?

9 A. The sensitivity analysis is where they determine an  
10 appropriate fair value range of what they believe is a  
11 reasonable range of fair value for each of the level 3  
12 investments. So it has certain computations in there that  
13 create a low end of the range and certain computations that  
14 create a high end of the range.

15 Q. Why is a range of values provided?

16 A. Because when you look at level 3 assets, you know, due to  
17 the level of unobservability, then there is a lot of  
18 subjectivity that goes into those valuations, so where we  
19 believe that a range is more appropriate than a specific mark  
20 as we evaluate them from the audit perspective.

21 Q. If you look at the second paragraph that's called out here,  
22 there is a reference to Black Elk Energy. Do you see that?

23 A. Yes.

24 Q. Is that one of PPVA's level 3 assets that the BDO valuation  
25 team provided a sensitivity range for?

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1 A. Yes.

2 Q. And the sensitivity value range provided was 172 million to  
3 184 million?

4 A. Yes.

5 Q. And is that as of December 31, 2013?

6 A. Yes.

7 Q. Can we go to page 28, please. Does this section of the  
8 report provide the backup or detail for the work that the  
9 valuation group did?

10 A. Yes.

11 Q. There is an overview section with a footnote 17 that refers  
12 to excerpts from 10-K and 10-Q forms. Do you know what that is  
13 referring to?

14 A. Sure. You know, 10-K and 10-Q forms are reporting forms  
15 with the SEC that Black Elk was required to file. Those  
16 reports are available to the public.

17 Q. And information in those reports formed the basis at least  
18 for this overview section of BDO Consulting's report?

19 A. I mean, I wouldn't say it formed the basis, but it is  
20 information that they were aware of and considered as they  
21 thought appropriate.

22 Q. What were BDO Consulting's other sources of information?

23 A. It would have been information related to documents that we  
24 received from the company. It would also -- they would also  
25 evaluate certain inputs based on market data that's available

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1 to them.

2 Q. Was BDO free to go back and forth with the company to  
3 request whatever information it felt that it needed?

4 A. Yes.

5 Q. And did BDO do that?

6 A. Yes.

7 Q. If you look at the third paragraph on this page, there is a  
8 reference to reserves and a reserve report. Do you see that?

9 A. Yes.

10 Q. Was BDO's valuation of Platinum's investment in Black Elk  
11 as of 2013 based on this reserve report?

12 A. The reserve report was a major input into the valuation  
13 estimate of assessment.

14 Q. Why was it a major input?

15 A. Because that's -- it's very common that -- for these types  
16 of companies to utilize the reserve reports in estimating the  
17 fair value of the underlying entity.

18 Q. If we zoom out, please, and zoom in on the next two  
19 paragraphs.

20 These paragraphs refer to several headwinds related to  
21 the November 2012 West Delta 32 incident. Do you see that?

22 A. Yes.

23 Q. Do you recall what the West Delta 32 incident was?

24 A. Offhand, I remember there was fires that they had with some  
25 of their facilities. I don't recall specifically.

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1 Q. If you continue in this paragraph, the top paragraph it  
2 says, "The incident negatively impacted the performance for the  
3 first nine months of 2013." It refers to inspections.

4 And then the second paragraph refers to a decline in  
5 production. It says, "Total oil, natural gas, and plant  
6 production of 3,155 Mboe decreased by 18 percent during the  
7 nine months ended September 30, 2013, compared to the same  
8 period in 2012 as a result of down time in the field requiring  
9 hot work, which was delayed in part" -- I think this should say  
10 "due to BSEE requirement force approval after the West Delta 32  
11 incident."

12 Do you see that?

13 A. Yes.

14 Q. So is that something that -- the decrease in production  
15 that BDO's valuation group took into consideration when  
16 arriving at its range of values for Platinum's investment in  
17 Black Elk?

18 A. So the valuation experts consider a lot of information. To  
19 the degree that they consider this, I don't recall.

20 Q. Can we zoom out, please. The last paragraph on this page  
21 refers to an August 15, 2014 sale to Renaissance Offshore. Why  
22 is an August 15, 2014 event included in work papers related to  
23 a 2013 audit?

24 A. Well, it's a material subsequent event that they documented  
25 in their report. It was information that we also looked at as

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1 part of evaluating the reasonableness of the market December  
2 31.

3 Q. What's is a subsequent -- you referred to material  
4 subsequent event. What does that mean?

5 A. Well, it's an event that happens post the balance sheet  
6 date, so after the balance sheet date. So there are two types  
7 of subsequent events in most audits, where we focus on a  
8 subsequent event that should be considered within the financial  
9 statements at that time period and then there are subsequent  
10 event that is are generally just disclosed if significant to  
11 the entity on a going-forward basis.

12 Q. Can we turn to page 29, please. The bottom section of this  
13 is covered up a little bit by a box, but it refers to it looks  
14 like management analysis. Do you see that?

15 A. Yes, I'm sorry, yes.

16 Q. Does this reflect Platinum's own analysis that it used to  
17 value its interest in Black Elk as of the end of 2013?

18 A. Yes.

19 Q. Can we turn to the next page, please, page 30. Does this  
20 section reflect BDO's own sensitivity analysis?

21 A. Yes.

22 Q. And is that analysis dependent on Platinum's analysis or  
23 was it separate?

24 A. No, it was separate. You know, obviously, like I said, the  
25 reserve report played into there, but that's obviously an

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1 observable piece of information from an outside third-party.

2 But they then ran their own model.

3 Q. When you say they then ran their own model, are you  
4 referring to BDO valuation group?

5 A. The valuation specialists within BDO.

6 Q. If you look at the first paragraph under BDO Consulting  
7 sensitivity analysis, the second sentence reads "as an SEC PV10  
8 reserve report is not considered fair value, we applied the  
9 following adjustments to the NSAI reserve report in our  
10 sensitivity analysis." Do you see that?

11 A. Yes.

12 Q. And then there is a list of five bullets beneath that. Can  
13 we zoom out? Thank you.

14 What does it mean to apply adjustments to a reserve  
15 report?

16 A. So the PV10 report is an SEC reporting mechanism, so in  
17 order for a lot of these companies to sort of give apples to  
18 apples information in their financial statements, but it's not  
19 considered fair value. And so when the valuation specialist  
20 here was running what's referred to as his income method, they  
21 make adjustments that are referred to as risk-adjusted  
22 adjustments, which is very common and those are based on their  
23 expertise.

24 Q. And if you look at number 3 in this list, there is a  
25 reference to "risk adjustment factors."

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1 A. Yes.

2 Q. Is that what you were just --

3 A. Yes.

4 Q. -- talking about?

5 A. Yes.

6 Q. So this reads that "risk adjustment factors were applied at  
7 the reserve level to volume, operating expenses, and capital  
8 expenditures that are in line with typical RAFs applied for oil  
9 and gas properties with similar characteristics," and then  
10 there is a chart beneath that.

11 Do you have an understanding of what this chart  
12 reflects?

13 A. Well, it's the risk adjustment factors that they applied to  
14 the different types of reserves that are identified in the  
15 report.

16 Q. How does it work in terms of the percentages? Are they --  
17 are certain categories of reserves risk higher than other once?

18 MR. GLUCK: Objection.

19 A. Uhm --

20 THE COURT: Hold on. There is an objection.

21 MR. GLUCK: Form.

22 THE COURT: No, I will allow it. You may answer.

23 A. The reserves are categorized in a manner which you have  
24 referred to at the very top, producing wells, which means that  
25 those wells have been bored and they are actually producing

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1 oil. Then they go down to reserves that in this particular  
2 case go all the way down to "possible," which means they may or  
3 may not be there. So they risk adjust the cash flows related  
4 to those different sets of reserves according to their  
5 expertise.

6 Q. Does risk adjust, is that -- is discounting another term  
7 for it?

8 A. It is in effect a discounting methodology.

9 Q. And if you look at number 5, there is a reference to a  
10 discount rate of 11 percent to 13.5 percent based on offshore  
11 guideline companies. Do you see that?

12 A. Yes.

13 Q. What's a guideline company?

14 A. A guideline company is a set of companies that the  
15 valuation specialist would utilize as comparable companies to  
16 the one in question.

17 Q. And continuing in this paragraph, if we go two sentences  
18 more in into the paragraph it reads "given the accidents in  
19 2012 and heightened regulatory scrutiny in 2013 described  
20 above, we believe a company-specific risk premium is  
21 warranted." What is a company-specific risk premium?

22 A. Well, that means that they apply an additional discount  
23 related to, you know, specifically to where Platinum's  
24 investment in Black Elk stood.

25 Q. You had said before you weren't sure what impact, if any,

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1 the incident in 2012 that was referenced had on the valuation.

2 Does this reflect that the incident in 2012 was factored  
3 into --

4 A. The --

5 MR. GLUCK: Objection.

6 THE COURT: Well, sustained as to form.

7 BY MS. MOSSE:

8 Q. Did BDO factor into its valuation of Platinum's investment  
9 in Black Elk the impact of the West Delta incident in the end  
10 of 2012?

11 A. The valuation specialist appears to have applied a risk  
12 factor related to this given their documentation here.

13 Q. Can we turn to page 32, please. We may need to zoom in,  
14 and I'm sure this is tiny for anyone with a hard copy, as well.  
15 Can we zoom in on the top section, please, through the  
16 paragraph right beneath it. Thank you.

17 Does this reflect the results of BDO Consulting  
18 sensitivity analysis?

19 A. Yes.

20 Q. And if you look at the line that is in bold "indicated  
21 common equity value rounded," do you see that in the middle of  
22 the chart?

23 A. Yes.

24 Q. Can we highlight the numbers, please, 136 to 148.

25 What does that reflect? What is indicated common

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1 equity value?

2 A. That's the fair value range that they concluded on related  
3 to the common stock value for Black Elk. Black Elk had more  
4 than one class of stock.

5 Q. So beneath this 136 to 148, are there certain additions  
6 that are made by BDO to arrive at the indicated Platinum's  
7 holding value at the bottom?

8 A. Yes.

9 Q. And what are those?

10 A. Well, one is to include the fair value range for the  
11 preferred stock for Black Elk and then one was also to then  
12 ultimately include the debt value for Black Elk.

13 Q. And the paragraph underneath this chart, it reflects the  
14 range of 172 to 184 million and then it reads: Management's  
15 fair value conclusion did not fall within BDO Consulting's  
16 sensitivity range. Management's fair value conclusion of \$185  
17 million is approximately \$1 million higher than BDO's range.

18 Do you see that?

19 A. Yes.

20 Q. Can we zoom out, please. And can you zoom in to include  
21 that paragraph in the red box with the arrows pointing to that  
22 paragraph. Not the top one, the one beneath it, please.

23 What's reflected in this red box with the arrows  
24 pointing to the red box with the 172 to 184 range?

25 A. It is indicating that management adjusted their fair value

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1 on their financial statements to fall within BDO's range.

2 Q. Can we turn to page 43, please. Did BDO's valuation group  
3 also provide a sensitivity range of values for Platinum's  
4 investment in Golden Gate as of year end 2013?

5 A. Yes.

6 Q. And is that reflected, at least the beginning portion of it  
7 here, in the bottom of page 43?

8 A. Yes.

9 Q. Can we turn to page 44, please. Four paragraphs down,  
10 there is a reference to a reserve report by D&M. Do you see  
11 that?

12 A. Yes.

13 Q. Did Golden Gate's reserves factor in to BDO valuation  
14 group's sensitivity range of values for Golden Gate?

15 A. Yes.

16 Q. Was it a primary input for BDO's valuation?

17 A. Yes.

18 Q. Can we turn to page 44, please, this bottom section. Does  
19 that reflect, as we saw with Black Elk, this shows Platinum's  
20 own analysis of its valuation of its investment in Golden Gate  
21 as of 2013?

22 A. Are you referring to the management analysis paragraph?

23 Q. Yes.

24 A. Yes.

25 Q. And did BDO rely on Platinum's valuation or did it perform

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1 its own valuation?

2 A. No, they did their own valuation assessment.

3 Q. And can we turn to page 45, please. The section that  
4 begins "BDO Consulting sensitivity analysis," does that reflect  
5 BDO's conclusions as to the sensitivity range for Platinum's  
6 investment in Golden Gate as of year end 2013?

7 A. Yes.

8 Q. Was the methodology used by BDO to value Platinum's  
9 investment in Golden Gate generally the same as the one that it  
10 followed for Black Elk?

11 A. It was very similar.

12 Q. Why is that?

13 A. It's a very similar type of investment.

14 Q. Can we turn to page 46, please. Does this page reflect the  
15 results of BDO valuation sensitivity analysis?

16 A. Yes.

17 Q. Can we zoom in on this, please.

18 The bottom paragraph reads, "BDO Consulting estimated  
19 a sensitivity value range of the common equity between 146.4  
20 million and 177.4 million. The fund's concluded equity value  
21 of 173.1 million falls within BDO Consulting's sensitivity  
22 range."

23 Does this reflect that BDO valuation's own range  
24 agreed with Platinum's valuation for its investment in  
25 Golden Gate as of year end 2013?

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1 A. Yes, it concluded that management's mark was within our  
2 range.

3 Q. If you look in this chart, there is a line -- there is the  
4 heading and then two lines beneath it and one line is cash as  
5 of December 31, 2013. Does this reflect the amount of cash  
6 that Golden Gate had as of December 31, 2013?

7 A. Yes.

8 Q. What is that amount?

9 A. Well, that should be the amount that was recorded on their  
10 financial statements at year end.

11 Q. And that's 202,623 --

12 A. Oh, I'm sorry. Yes. \$202,623.

13 Q. Can we pull up DX 570, please.

14 Is this another of BDO's work papers?

15 A. Yes. This is our final communications that we give to  
16 management at the end of -- at the conclusion of our audit.

17 Q. And do you provide this before or after you provide your  
18 final opinion on Platinum's financial statements?

19 A. I don't recall if we provided it before, but it was pretty  
20 close thereafter, probably.

21 MS. MOSSE: We offer this.

22 MR. GLUCK: No objection.

23 THE COURT: Received.

24 (Defendant's Exhibit 570 received in evidence)

25 BY MS. MOSSE:

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McGowan - Direct

1 Q. Can you turn to page 3, please. Page 3, please.

2 So looking at the third bullet, it reads, "We expect  
3 to issue an unmodified opinion on the financial statements and  
4 release our report on or close to February 11, 2015." Do you  
5 see that?

6 A. Yes.

7 Q. What's an unmodified opinion?

8 A. That's a typo. It should have said unqualified. An  
9 unqualified opinion is where we don't make any modifications  
10 into our standard audit report.

11 Q. Can we turn to page 6, please. Page 6 of the PDF, sorry,  
12 page 5 of the document. And can we zoom in on the first  
13 paragraph.

14 The second sentence reads, "We have concluded that a  
15 material weakness exists in the master fund's investment  
16 valuation process related to its level 3 investments." What  
17 does that mean?

18 A. So as part of the audit process, we consider their  
19 framework of internal controls. Their framework of internal  
20 controls is the preparation and review framework to ensure that  
21 a material misstatement could not be recorded within their  
22 financial statements. So in an audit like this, which is  
23 considered a substantive audit, which means that we are  
24 applying audit procedures to the various balances within the  
25 audit -- audited financial statements, we also, if we come

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1 across areas where we believe that there might be a deficiency  
2 in their internal control framework, we are required to report  
3 that to those that are charged with governance.

4 So when you look at the control deficiencies, they  
5 range from exactly that, a control deficiency, to one that  
6 could be a significant deficiency, and then ultimately a  
7 material weakness. So when something arises to a material  
8 weakness, that is because we have concluded that either  
9 something did or could have been recorded within the audited  
10 financial statements that is material and that is in error so  
11 to speak.

12 Q. And with this material weakness finding, BDO still issued  
13 an unqualified opinion on PPVA's financial statements for the  
14 year end 2013, correct?

15 A. Yes.

16 Q. And how does that work? How does -- why are you able to  
17 issue an unqualified opinion even if you find a material  
18 weakness?

19 A. First we did not rely on any internal controls in our work.  
20 And so, you know, the fact that we ultimately concluded on a  
21 material control weakness really didn't, you know, stop us from  
22 issuing our clean opinion as we had concluded that the audit  
23 procedures as a whole were sufficient in order to do so.

24 MS. MOSSE: I pass the witness.

25 THE COURT: Cross-examination.

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McGowan - Cross

1 CROSS-EXAMINATION

2 BY MR. GLUCK:

3 Q. Good afternoon.

4 A. Hi.

5 Q. Mr. McGowan, you are a CPA?

6 A. Yes.

7 Q. You are a certified by the American Institute of CPAs?

8 A. Yes, I am.

9 Q. That's the organization that the SEC charges with writing  
10 the rules for how to audit private companies and investment  
11 funds?

12 A. Yes.

13 Q. Are those rules called the generally accepted audit  
14 standards?

15 A. Yes.

16 Q. GAAS?

17 A. Yes.

18 Q. You are familiar with the statement of audit standards,  
19 including the AICPA audit standards?

20 A. Yes.

21 Q. The financial statements that we just looked at, auditors  
22 don't prepare them, management does, right?

23 A. That is correct.

24 Q. You just review them.

25 A. We examine them and gain support for the various

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155 McGowan - Cross

1 disclosures and obviously evaluate the numbers as they are  
2 presented.

3 Q. You don't validate or guarantee that the financial  
4 statements are correct, do you?

5 A. No. The audit opinion indicates that we give reasonable  
6 assurance, not absolute assurance.

7 Q. What is reasonable assurance?

8 A. Well, reasonable assurance is that we have concluded that  
9 our audit procedures under the circumstances were sufficient in  
10 order to ensure that the financial statements are free of  
11 material misstatement. But it's not absolute assurance, which  
12 is a much higher standard.

13 Q. Your audit work is based on the audit evidence provided to  
14 you by Platinum?

15 A. Yes.

16 Q. Who would you speak with at Platinum? Who was your primary  
17 contact?

18 A. Generally it was the CFO.

19 Q. Joe SanFilippo?

20 A. Joe SanFilippo.

21 Q. He gave you the information that formed the basis of your  
22 audit opinion?

23 A. Not in all cases, no.

24 Q. Who else?

25 A. You know, offhand, I don't remember everybody's name.

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McGowan - Cross

1 There was a gentleman by the name of Naftali that was heavily  
2 involved, especially in Joseph's absence.

3 Q. Has Mr. Manela pled guilty to fraud?

4 MS. MOSSE: Objection.

5 A. I don't know.

6 THE COURT: Hold on when there is an objection.

7 No, the objection is overruled. The answer was "I  
8 don't know."

9 Q. Has he?

10 A. I don't know.

11 Q. Can you please pull up Plaintiffs' Exhibit 985. And we  
12 seek to admit this.

13 MS. MOSSE: No objection.

14 Q. After you have reviewed it --

15 THE COURT: Received.

16 (Plaintiff's Exhibit 985 received in evidence)

17 BY MR. GLUCK:

18 Q. After you have reviewed it, just let me know. Ready?

19 A. Yes, sir.

20 Q. Is this a rep letter?

21 A. Yes this is the management rep letter received in  
22 connection with the audit.

23 Q. Could you please explain to the jury what the rep letter  
24 is?

25 A. A rep letter is where we ask for management to represent to

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McGowan - Cross

1 us certain items that are contained within the letter.

2 Q. And what are those items?

3 A. Well, that they fulfilled their responsibilities in  
4 connection with the audit, that they in theory have turned over  
5 all available documents that were essential for the audit  
6 procedures that were performed, that they are aware of the  
7 adjustments that we concluded on as part of the audit process,  
8 and things of that nature.

9 Q. They promise to give you everything that was material in  
10 connection with your audit, right?

11 A. One of the representations indicates that they -- anything  
12 that was related to the investments. I don't remember the  
13 exact wording, but there should be a representation in there.

14 Q. If they didn't give you something that was material, it  
15 would be considered a mis-- an omission or misstatement,  
16 correct? Under this agreement?

17 A. If they didn't give something that could potentially impact  
18 the financial statements in a material manner, then they would  
19 not have lived up to the representation.

20 Q. Let's go through the representations Platinum made.

21 As of February 11, 2015. Please read number one.

22 A. "We have fulfilled our responsibilities, as set out in the  
23 terms of the audit engagement letter dated September 17, 2013,  
24 for the preparation and fair presentation of the consolidated  
25 financial statements in accordance with the accounting

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153 McGowan - Cross

151 principles generally accepted in the United States."

152 Q. And their responsibility was to give you all material  
153 information related to your audit and not to omit anything,  
154 right? Material.

155 A. Yes.

156 Q. Please read number two?

157 A. "We have fulfilled our responsibilities as set out in the  
158 terms of the aforementioned audit engagement letter, for the  
159 design, implementation, and maintenance of internal control  
160 relevant to the preparation and fair presentation of  
161 consolidated financial statements that are free from material  
162 misstatement, whether due to fraud or error."

163 Q. So they are promising you that they have looked at the  
164 financials and they are free from misstatement, fraud, or  
165 error, right?

166 A. Yeah, they are -- that they are representing they fulfilled  
167 their responsibility in related to making sure that the  
168 preparation and presentation of the consolidated financial  
169 statements are free from material misstatement, yes.

170 MR. GLUCK: I forgot, could we please move this into  
171 evidence?

172 MS. SHEN: You did.

173 MR. GLUCK: Oh it is.

174 BY MR. GLUCK:

175 Q. When did you learn that the SEC had been investigating an

156 Mce2Pla3

156 McGowan - Cross

157 investigation into Platinum's offices from -- for about six  
158 months?

159 MS. MOSSE: Objection.

160 Q. Did you learn? That the SEC had commenced an investigation  
161 where it was in Platinum's office almost every day from 2014 to  
162 2015?

163 MS. MOSSE: Objection.

164 Q. Did you learn that?

165 THE COURT: Well, all right. I think to break it  
166 down, did you learn at some point that the SEC had commenced an  
167 investigation?

168 THE WITNESS: We were aware of an SEC examination.

169 THE COURT: All right. And when did you learn that?

170 THE WITNESS: I believe we learned it in either  
171 November or December of 2014.

172 THE COURT: All right. Go ahead, counsel.

173 BY MR. GLUCK:

174 Q. Is there a place in your report where you talk about this  
175 examination?

176 A. No.

177 Q. Why is that?

178 A. Well, the audit reports standards of our -- you know, this  
179 would not be a consideration in that audit report. We were  
180 under -- I mean, as far as I can remember and recall, this was  
181 a routine SEC custody exam.

1 Mce2Pla3

2 McGowan - Cross

1 Q. Are you aware that the SEC then sued Platinum Management  
2 for fraud and undervaluation?

3 MS. MOSSE: Objection.

4 THE COURT: Overruled.

5 MR. GLUCK: In evidence. Sorry.

6 THE COURT: Did you become aware at some point that  
7 the SEC sued Platinum Management for fraud and under valuation.

8 THE WITNESS: I'm not aware of the details. I am  
9 aware that there was a Department of Justice action.

10 THE COURT: All right.

11 BY MR. GLUCK:

12 Q. Just to clarify for the record, I didn't say DOJ which may  
13 be something different. SEC.

14 Did the SEC, which was in their office for six months,  
15 then sue Platinum Management for fraud and overvaluation?

16 MS. MOSSE: Objection.

17 THE COURT: Sustained.

18 BY MR. GLUCK:

19 Q. Did -- as opposed to the Department of Justice, did you  
20 become aware of a Securities and Exchange Commission litigation  
21 filed against Platinum Management?

22 A. I don't recall that.

23 Q. Are you aware of whether that litigation pertained to  
24 overvaluation?

25 MS. MOSSE: Objection.

Mce2Pla3

McGowan - Cross

1                   THE COURT: If he wasn't aware of it, how can he  
2 answer that? Sustained.

3 BY MR. GLUCK:

4 Q. Would you please turn to PDF page 7, paragraph 7. Excuse  
5 me, paragraph 11. Just go through the additional advice that  
6 you received from Platinum Management in connection with this  
7 audit.

8 A. Did you want me to read these?

9 Q. Yeah, I do.

10 A. "We also advise you to the best of our knowledge and  
11 belief: Portfolio securities are stated at fair value as  
12 determined in accordance with the valuation methods set forth  
13 in the LPA."

14 Q. Let me stop you there. What is the LPA?

15 A. That's the limited partnership agreement.

16 Q. So they are promising you that their values are in  
17 accordance with the PPVA partnership agreement?

18 A. The limited partnership agreement.

19 Q. Limited partnership agreement?

20 A. Yeah.

21 Q. Go to the next one.

22 A. "All of the master fund's investments during the year were  
23 made in accordance with the LPA."

24 Q. They are representing that the form of investment was in  
25 compliance with the limited partnership agreement?

Mce2Pla3

McGowan - Cross

1 MS. MOSSE: Objection.

2 THE COURT: Well, is that your understanding?

3 BY MR. GLUCK:

4 Q. What are they representing in --

5 THE WITNESS: Well, my understanding is that they were  
6 making investments in accordance to whatever terms and  
7 conditions exist in the LPA.

8 BY MR. GLUCK:

9 Q. Are you familiar with the LPA?

10 A. Yes.

11 Q. Did the LPA provide -- have any provisions regarding  
12 concentration in level 3 assets?

13 A. I don't recall. I haven't seen the LPA in quite some time.

14 Q. Do you know whether PPVA's investments and concentrations  
15 in level 3 assets were in accordance with the LPA in this year?

16 A. I don't recall what the LPA indicated.

17 (Continued on next page)

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MCECpla4

McGowan - Cross

1 BY MR. GLUCK:

2 Q. But they were promising you that they were?

3 A. The representation indicates that they were making the  
4 investments in accordance with whatever terms that are in the  
5 LPA.

6 Q. Subsection C, please.

7 A. All material related party transactions are disclosed in  
8 the notes of consolidated financial statements from January  
9 1st, 2013, to the date of this representation letter.

10 Q. What are they saying there?

11 A. Well, they're indicating that they made proper disclosures  
12 related to related party transactions, which are transactions  
13 with people that are -- entities that are affiliated with the  
14 fund.

15 Q. They told you about the Black Elk Opportunities Fund?

16 A. I don't recall.

17 Q. They tell you about Beechwood?

18 A. Offhand, I don't recall.

19 Q. Were you aware that Platinum and Beechwood were affiliated  
20 companies?

21 A. Again, I'd have to look at the work papers and, you know, I  
22 don't recall what the, you know, they are indicated in the  
23 charts and other information we received.

24 Q. Why don't you go through letter D.

25 A. Interests in the master fund have been offered for sale in

MCECpla4

McGowan - Cross

1 accordance with its offering document and by no other means.

2 No offer or solicitation of the master fund's interest has been  
3 made in any jurisdiction in which such offer or solicitation  
4 would be unlawful.

5 Q. What's your understanding of how Beechwood acquired the  
6 debt issued by PPVA's portfolio companies?

7 MS. MOSSE: Objection.

8 THE COURT: Overruled.

9 A. I'm sorry. Again, I don't recall the specifics around that  
10 at all.

11 Q. It might have been material or not, you don't know?

12 A. I don't. Without looking at the work papers, I don't know.

13 MR. GLUCK: Go to page 10, paragraph 22, please.

14 Could you highlight it.

15 Q. I'll ask you to read this, explain what it means.

16 A. The methods and significant assumptions used to determine  
17 fair values of financial instruments are as disclosed in the  
18 consolidated financial statements. The valuation methods and  
19 significant assumptions used to determine the fair values are  
20 in accordance with FASB ASC 820 fair value measurement and take  
21 into account all the considerations. For securities whose fair  
22 values have been estimated by management, the valuation  
23 principles and significant assumptions used result in a measure  
24 of fair value appropriate for the financial statement  
25 measurement and disclosure purposes in accordance with FASB ASC

MCECpla4

McGowan - Cross

1 820 fair value measurements, and take into account all the  
2 considerations therein. The methods and significant  
3 assumptions used to determine fair values of investments are  
4 properly disclosed in the consolidated financial statements.  
5 Any events subsequent to December 31st, '13 related to the  
6 master fund's investment portfolio were evaluated to determine  
7 whether such events require adjustments to the estimated fair  
8 value measurements as of that date and/or disclosures in the  
9 financial statements and, as a result of such evaluation, all  
10 appropriate adjustments and disclosures are reflected.

11 Q. Fair to say that Platinum is promising you that they're  
12 preparing their financials in a lawful manner and that they're  
13 going to tell you if there's any material events after December  
14 31, 2013, that materially impact the fair value?

15 MS. MOSSE: Objection.

16 THE COURT: Even though it's compound, I think that  
17 for this witness, it's clear enough. Overruled.

18 A. So the representation is indicating that in terms of their  
19 investment valuation process, that they have considered all of  
20 the guidance, as well as any material subsequent events that  
21 may have been considered known or knowable as of that date and  
22 should have been considered in the fair value assessment.

23 MR. GLUCK: Let's go to the last paragraph.

24 Q. What's that say?

25 A. To the best of our knowledge, no events have occurred

MCECpla4

McGowan - Cross

1 subsequent to the consolidated statement of financial condition  
2 date and through the date of this representation letter, as  
3 entered on the first page, that would require adjustment or  
4 disclosure in the aforementioned consolidated financial  
5 statements.

6 Q. They promised you what?

7 A. They are representing to us, to the best of their  
8 knowledge, that they considered the factors in this letter, in  
9 this paragraph.

10 Q. They tell you that Black Elk was in bankruptcy?

11 A. I don't recall whether we knew that or not.

12 Q. They tell you whether Golden Gate was defunct?

13 MS. MOSSE: Objection.

14 Q. No longer operating?

15 A. I don't recall what was disclosed to us. It would be in  
16 the work papers.

17 Q. Golden Gate was not producing any revenue, right, did they  
18 tell you that?

19 A. I do not recall, no.

20 MR. GLUCK: Let's go to the signatures.

21 Q. Do you recognize these signatures?

22 A. Yes. They're members of Platinum Management and, it  
23 appears, their counsel.

24 Q. Joe SanFilippo, that was your principle contact?

25 A. Yes, he was the chief financial officer at the time.

MCECpla4

McGowan - Cross

1 Q. Was he the person you most directly corresponded with?

2 A. Again, for a period of time, Joe was out. I do remember  
3 Naftali, I don't remember his last name, being involved. There  
4 was also their controller, George Duke, that we conferred with,  
5 but not necessarily with the valuations.

6 Q. Mark Nordlicht, do you remember him?

7 A. Yes.

8 Q. Who was he?

9 A. I mean, he was the primary general partner at Platinum.

10 Q. Do you know that he's been convicted of fraud?

11 MS. MOSSE: Objection.

12 THE COURT: Overruled.

13 A. Yes, I was, on another matter, but I don't know the details  
14 behind that.

15 Q. It was on a Platinum matter; right?

16 A. I thought it was related to something with Black Elk, but I  
17 don't recall.

18 Q. Platinum subordination of the Black Elk bonds?

19 A. Again, I don't recall the details.

20 Q. David Levy, who was he?

21 A. He was one of their investment officers.

22 Q. Did you know him?

23 A. I know that we had conversations or email traffic, I think,  
24 but I don't, offhand, recall how much I personally dealt with  
25 him.

MCECpla4

McGowan - Cross

1 Q. Were you aware that he was convicted of fraud?

2 A. No.

3 Q. You were not?

4 A. I don't think so, no.

5 Q. If Platinum Management had violated this agreement, what  
6 would BDO do?

7 MS. MOSSE: Objection.

8 THE COURT: Overruled.

9 A. If they hadn't lived up to their representations, I think  
10 it potentially could be facts and circumstances, but generally,  
11 I think we would consider resigning.

12 Q. If they had told you that Golden Gate was defunct, not  
13 pumping oil and revenue, would it have affected your audit?

14 MS. MOSSE: Objection.

15 THE COURT: Overruled.

16 A. I mean, that's really facts and circumstances. We would  
17 have to understand the whole body of the information and  
18 evaluate that, and that's a process.

19 Q. If they told you Black Elk was in bankruptcy and had never  
20 paid off its secured creditors after selling substantially all  
21 of its assets, would that have affected your audit?

22 A. Again, it would depend on the totality of the information  
23 that we were not aware of and we would have to go through a  
24 process to evaluate it.

25 Q. It could, though; right?

MCECpla4

McGowan - Cross

1 A. Potentially, yes.

2 Q. You were shown --

3 THE COURT: If you learned after you had done your  
4 audit and signed off that some or all of the representations  
5 made to you were inaccurate, materially inaccurate, what would  
6 you do?

7 THE WITNESS: Well, the first thing I would do would  
8 be to confer with my national office, but I would think that we  
9 would probably issue some letter indicating that our opinion is  
10 not to be relied on.

11 THE COURT: And would that be true regardless of  
12 whether it was -- you learned this two months later or two  
13 years later or whatever?

14 THE WITNESS: It would really require me to confer  
15 with my national office. To some degree, you know, generally,  
16 the audit report is really only considered to be relied on  
17 within 12 months after the balance sheet date, and we actually  
18 didn't issue this until February of 2015. But, again, it would  
19 require a conference with my national office to conclude on  
20 that matter.

21 BY MR. GLUCK:

22 Q. Why did it take so long for you to issue this audit  
23 opinion?

24 A. There were a lot of reasons for it, but there was certainly  
25 delays and receiving information from management, which, in

MCECpla4

McGowan - Cross

1 turn, created delays from us in evaluating the information.  
2 There was back and forth related to certain of the investments.  
3 We had proposed a material adjustment on one of them, which  
4 they disagreed with, so there was back and forth related to  
5 that. Then we found out about the SEC examination, which we  
6 were contacted by the examiners. They asked us certain  
7 questions that we decided we needed some time to evaluate.

8 Q. That asset that you wanted an adjustment on, which was it?

9 A. It was an entity by the name of Glacial.

10 Q. Platinum had to reissue its assets under management for  
11 2013. Do you recall that?

12 A. I don't understand that question.

13 Q. Did Platinum have to restate its AUM in 2013?

14 A. Well, a restatement generally refers to an audit report  
15 that's already been issued and then adjusted subsequent to that  
16 date. So I am not aware of that situation.

17 Q. In connection with your confirmation that Platinum's  
18 management valuation of Golden Gate was reasonable, you relied  
19 on a PV-10 report; is that right?

20 A. Yes.

21 Q. Now, for Black Elk, you relied on an NSAI PV-10 report;  
22 right?

23 A. Yes.

24 Q. You know who NSAI are?

25 A. Yes, Netherland is a specialist in the field.

MCECpla4

McGowan - Cross

1 MR. GLUCK: Let's call up Plaintiffs' Exhibit 538.

2 Q. Why didn't you rely on the NSAI report for Golden Gate when  
3 you did for Black Elk?

4 A. I don't know if we -- I don't recall being aware of this.

5 Q. Wouldn't be this a material item for Golden Gate that they  
6 promised to provide you?

7 MS. MOSSE: Objection.

8 THE COURT: Overruled.

9 A. If they received additional reporting, we would have asked  
10 for it, we would have wanted to see it.

11 Q. When you say wanted to see it, they promised to provide you  
12 items like this?

13 A. Correct.

14 Q. Did they?

15 A. As far as I am aware, I do not believe so.

16 Q. If you were made aware of this, would this have affected  
17 your audit opinion?

18 A. I think it would have affected the procedures that we  
19 applied. Again, without all the facts and circumstances, it's  
20 hard for me to answer that question.

21 MR. GLUCK: Would you call up DX 577, please, page 28.

22 Q. This is your work paper on Black Elk?

23 A. It's the valuation of specialist report, yes.

24 Q. Where does it talk about the Black Elk Opportunities Fund?

25 A. I don't see it. I don't recall it.

MCECpl4

McGowan - Cross

1 Q. Where does it talk about Beechwood's acquisition of the  
2 Black Elk fund?

3 A. Again, I don't see it here.

4 Q. You stated that you recalled that there was a fire in 2012?

5 A. Yes, I thought the incident related to a fire. Again,  
6 without seeing the details of the work papers, I don't recall  
7 exactly those details.

8 Q. It was an explosion; right?

9 A. Explosion, yes.

10 Q. People died?

11 A. Yes.

12 Q. The worst disaster in the Gulf since BP?

13 A. Well, that I can't comment on.

14 Q. Are you familiar with the disasters in the Gulf?

15 A. I am aware of the BP one, yes.

16 Q. What about this one, how does it compare?

17 A. Offhand, I don't know.

18 MR. GLUCK: Mr. Parson, will you please highlight the  
19 third paragraph.

20 Q. Here, you're using NSAI; right?

21 A. Yes.

22 Q. Was BDO also Black Elk's auditor?

23 A. I believe there was an audit by the firm of UHY that was  
24 their auditors that was then acquired by BDO.

25 Q. But a unique set of knowledge with respect to Black Elk;

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155 McGowan - Cross

156 right?

157 MS. MOSSE: Objection.

158 THE COURT: Sustained.

159 Q. As a result of your firm's acquisition of the company which  
160 was auditing Black Elk, you had special knowledge -- or  
161 detailed knowledge, excuse me, instead of special, regarding  
162 Black Elk; right?

163 MS. MOSSE: Objection.

164 THE COURT: Sustained. I think there are some  
165 questions that could be put in this area.

166 How much longer are you going go on cross?

167 MR. GLUCK: 40 minutes.

168 THE COURT: So what I'm going to do is give the jury  
169 an early lunch break so we can discuss these matters outside  
170 their presence rather than sit through a long sidebar.171 So, ladies and gentlemen, we'll give you an hour lunch  
172 and we'll reconvene at 10 minutes to 2:00.

173 (Continued on next page)

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MCECpl4

McGowan - Cross

1 (Jury not present)

2 THE COURT: Please be seated.

3 So, several things. First, I thought there was a  
4 representation made to me last night by plaintiffs' counsel,  
5 who's absent today, that there was some sort of followup letter  
6 or report or something from BDO modifying their earlier audit.

7 MR. GLUCK: Yes, I think it's called -- it was  
8 actually brought out by defense counsel at the end of her --

9 MS. MOSSE: The audit wrap-up.

10 THE COURT: Was that what --

11 MR. GLUCK: No.

12 THE COURT: I thought --

13 MR. GLUCK: It's material weakness.

14 MS. MOSSE: Which was included in the audit wrap-up  
15 presentation. It's not subsequent to the issuance of the  
16 opinion, did not modify the opinion in any way.

17 THE COURT: I misunderstood.

18 Secondly, I'm not quite sure what you mean by special  
19 knowledge or something like that, that your question was just  
20 objected to.

21 MR. GLUCK: So if you're auditing a company, you have  
22 more insight into the financials of the company than a stranger  
23 audit firm. That's it.

24 THE COURT: What follows it?

25 MR. GLUCK: That they did, in fact, have

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2 McGowan - Cross

1 particularized knowledge about Black Elk, which, some of which,  
2 we will see was not incorporated in their audit or erroneously  
3 incorporated.

4 THE COURT: I think the term is a little vague, but I  
5 will allow a question along that line.

6 I do think 40 minutes is probably considerably more  
7 than you should take, given that there are still some defense  
8 witnesses to be heard.

9 After this witness, who do we have?

10 MS. MOSSE: Just one more, your Honor.

11 THE COURT: Okay. Now, I thank counsel for their  
12 letters, which I received and we will docket, if not docketed  
13 already, and they address most of the questions I had and I  
14 will make my rulings certainly no later than the midafternoon  
15 break.

16 There are a couple things that were not covered, some  
17 of which are minor, but defense counsel, with respect to the  
18 charge on breach of fiduciary duty where I gave, towards the  
19 end of that charge, I said for example, plaintiffs argue that  
20 if the investors had been aware of the fund's overvaluation of  
21 assets, they would have withdrawn their investments while  
22 Mr. Bodner argues that their the loss was occasioned not by any  
23 alleged overvaluation, but by the fund's liquidity problems.

24 And defense counsel said there were other examples  
25 that they might give and I said great, put it, if wanted an

1 MCECpla4

2 McGowan - Cross

1 alternative or second example, put it in your letter, which you  
2 did not.

3 MR. HERTZBERG: We did, actually, Judge.

4 THE COURT: Where?

5 MR. HERTZBERG: It is right above the paragraph that  
6 starts number 4, statute of limitations.

7 THE COURT: What page of your letter?

8 MR. HERTZBERG: Page 4, middle of the page.

9 THE COURT: Oh, that. So you want to replace the  
10 example altogether?

11 MR. HERTZBERG: Correct.

12 THE COURT: That's different from what I gave you the  
13 opportunity, which is if you wanted to give a second example, I  
14 would consider it, but I instead now will consider language  
15 you've raised.

16 MR. HERTZBERG: Thank you.

17 THE COURT: Secondly, I'd ask defense counsel to  
18 supply me, if I agreed with their position on the \$18 million,  
19 that whole ball of knocks, any language they wanted me to  
20 include in the damages section. Now maybe you think that this  
21 language that you've proposed in the earlier instruction is  
22 sufficient, and that's fine, but if you had any language that  
23 you wanted to include in the damages section, I need to see it.

24 MR. HERTZBERG: I'm not entirely sure I follow. The  
25 issue with the \$18 million was the Rule 50 issue to keep the

MCECpla4

McGowan - Cross

18 --

2                   THE COURT: -- you're saying if I rule in your favor  
3 on that, that it doesn't come in, but what I thought what you  
4 might want was to make that crystal clear to the jury since the  
5 Rule 50 would have been outside their presence. Of course, it  
6 would preclude plaintiffs' counsel for arguing for the  
7 \$18 million or something like that, but if that's sufficient  
8 for your purposes and you don't want further instruction,  
9 that's fine, but that was the -- so --

10                  MR. HERTZBERG: So in the event that the Rule 50  
11 motion with respect to the \$18 million is denied, then we would  
12 ask the Court to instruct the jury that the \$18 million is --  
13 of the 30 that's at issue for incentive fees, that 18 of it  
14 relates to the 2012 fees.

15                  MR. GLUCK: '13.

16                  THE COURT: Whatever proposed language you want in  
17 that regard, if any, you need to give me in writing by the end  
18 of lunch.

19                  MR. HERTZBERG: Thank you, Judge. We will.

20                  THE COURT: So on the plaintiff side, I don't know  
21 whether you wanted to say anything further on the FIFO issue,  
22 which is addressed in defense letter, but not in your letter,  
23 although you had addressed it earlier at some earlier briefing.  
24 You don't have to, but if you want to put anything in writing  
25 on that issue, you need to do it by the end of lunch. Other

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154 McGowan - Cross

154 than that, I think I have enough to resolve all the issues.

155 The one thing I have already resolved, I thought a lot  
156 about this, is that the fraud claim is out. In the form that I  
157 had proposed an instruction, it was really never put and I went  
158 back and looked at the complaint, although I can't say I looked  
159 at every single word, it really -- so that's determined.

160 And along those lines, I'll ask my law clerk to hand  
161 to both sides a proposed verdict form along the lines I already  
162 suggested yesterday. If there are any problems with the  
163 verdict form, we can deal with that later today.

164 All right. We'll see you at 10 minutes to 2:00.

165 (Luncheon recess)

166 (Continued on next page)

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McGowan - Cross

1 AFTERNOON SESSION

2 2:03 p.m.

3 (Jury not present)

4 THE COURT: And as I indicated, thank you for your  
5 further submissions. I'll give you all my rulings at the  
6 midafternoon.7 I assume plaintiff's counsel is now down to  
8 10 minutes.

9 MR. GLUCK: I'll do my best.

10 (Continued on next page)

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MCECpl4

McGowan - Cross

1 (Jury present)

2 THE COURT: Please be seated.

3 MR. GLUCK: I think we had DX 577 on the screen,  
4 page 28. I think there was also a question pending that the  
5 Court ruled on.

6 THE COURT: Remind me of the question again.

7 BY MR. GLUCK:

8 Q. As a result of BDO's acquisition of the firm that was  
9 conducting the Black Elk audit, was BDO in possession of  
10 information concerning Black Elk that was superior to that of a  
11 standard review relationship?

12 MS. MOSSE: Objection.

13 THE COURT: Overruled.

14 A. The only information that we were aware of was when we  
15 asked specifically if the UHY team could give us some  
16 information about more test work they did on the reserve  
17 report. I'm not aware nor do I recollect any other information  
18 provided by the UHY audit team.

19 Q. Could you run us through UHY, what that acronym is?

20 A. Offhand, I don't remember the name of the firm but, you  
21 know, when they were acquired by BDO.

22 MR. GLUCK: Could you go to page 29. Would you mind  
23 highlighting the last sentence of the bottom paragraph.

24 Q. Did BDO consider the Renaissance sale in relation to the  
25 preparation of this opinion?

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McGowan - Cross

1 A. We did have some work performed related to some of the  
2 information related to the sale that was included in our work  
3 papers.

4 Q. Are you aware of the proportion of Black Elk's assets and  
5 operations that were sold in that transaction?

6 A. Offhand, I don't recall the exact numbers.

7 Q. Do you know what the actual sale proceeds were?

8 A. Offhand, I'd have to look at the work papers for what we  
9 document.

10 Q. It says here \$149.2 million in net proceeds. Do you  
11 believe that's an accurate number?

12 A. Again, I'm assuming that if they documented this, but I  
13 would have to look at the work papers.

14 Q. Do you have any knowledge if it was \$115 million?

15 A. I'm aware of the Renaissance transaction. The specific  
16 details, I don't recall exact details in the work papers. I do  
17 recall that we did look at the information in evaluating what  
18 we did around the mark set 12/31/13.

19 Q. So you're not in a position to say whether that number is  
20 overstated by \$35 million?

21 MS. MOSSE: Objection.

22 THE COURT: I'll allow it.

23 A. Again, I would have to look at the work papers to comment  
24 on that.

25 Q. Most of the proceeds of the sale were used to pay the

1 MCECpla4

2 McGowan - Cross

3 company's outstanding \$150 million 3.75 senior secured notes.

4 That's not true, is it?

5 MS. MOSSE: Objection.

6 THE COURT: Overruled.

7 A. Again, I would have to look at the details of the work  
8 papers. I don't recall.9 Q. In fact, you stated that you were aware that Mr. Nordlicht  
10 was convicted of fraud?

11 MS. MOSSE: Objection.

12 THE COURT: Overruled.

13 Q. Right?

14 A. I think I said that, that he was committed related to  
15 another action.

16 Q. Involving Black Elk?

17 A. Again, I don't know the specifics.

18 Q. Are you unaware that the bonds referenced in this final  
19 sentence were subordinated and that the proceeds for this sale  
20 were paid to the BEOF preferred equity holders?21 A. Again, I would have to look at the work papers to see what  
22 we documented. Those are very specific questions.23 Q. If, after this sale of substantially all the assets, the  
24 bonds, these senior secured notes were still outstanding, how  
25 would that affect your analysis of the value of Black Elk?A. Again, everything is facts and circumstances. We would  
have to consider all the information that is available.

MCECpla4

McGowan - Cross

1 MR. GLUCK: Let's go to page 29, please.

2 Q. You were asked about a company-specific discount premium in  
3 your direct. Do you recall that?

4 A. Yes.

5 Q. Why did BDO choose to apply a minimal risk company premium?

6 A. When we engage our valuation specialist, it's their area of  
7 expertise around the methods and the assumptions that they  
8 ultimately conclude on. I don't recall the basis of where they  
9 landed on their risk adjustment.

10 Q. Are you aware of who the CEO of Black Elk was, this company  
11 you were evaluating in 2015 when this report was issued?

12 A. I don't recall.

13 Q. Does the name Jed Latkin ring a bell?

14 A. I don't recall.

15 Q. Did you discuss the risks Black Elk was facing with anyone  
16 at Black Elk management?

17 A. I don't recall.

18 Q. Were you aware that there were criminal manslaughter  
19 charges against Black Elk at the time?

20 MS. MOSSE: Objection.

21 THE COURT: Sustained.

22 Q. Were you aware that there was litigation that impacted the  
23 profitability of Black Elk?

24 A. Again, I don't recall.

25 MR. GLUCK: Let's go to page 43, please.

MCECpla4

McGowan - Cross

1 Q. You were asked a number of questions about your audit of  
2 Platinum Management's valuation of Golden Gate on direct. Do  
3 you recall that?

4 A. Yes.

5 Q. Did someone at Platinum Management tell you that Golden  
6 Gate was operating in 2015?

7 A. I don't recall.

8 Q. Did they not tell you that it had been shut down?

9 A. Again, I don't recall. I don't know what we have  
10 documented in our work papers.

11 Q. Where in this report would I find those details concerning  
12 the related party transaction with Beechwood concerning the  
13 Golden Gate debt?

14 A. I don't know.

15 Q. Did somebody tell you that that debt was in good standing?

16 A. Again, I don't recall the specifics.

17 Q. How would it have affected your analysis if that debt had  
18 been in default?

19 A. We would have to understand the total facts around that and  
20 evaluate it as part of the other work that we did.

21 Q. Were you informed that PPVA was making interest payments on  
22 this Golden Gate debt to Beechwood?

23 A. I don't recall.

24 Q. Were you aware that there was a merger discussion between  
25 Black Elk and Golden Gate?

MCECpla4

McGowan - Cross

1 A. Again, I don't recall.

2 MR. GLUCK: Let's call up PX 537, please, and move it  
3 into evidence.

4 MS. MOSSE: No objection.

5 THE COURT: Received.

6 (Plaintiff's Exhibit 537 received in evidence)

7 Q. Did anyone at Platinum Management tell you what the implied  
8 valuations were of Golden Gate based upon these Black Elk  
9 offers?

10 A. I'm not party to this, so I don't recall if we ever had any  
11 conversations around this.

12 Q. Did Platinum Management withhold this email from you?

13 MS. MOSSE: Objection.

14 A. Again, I don't recall --

15 THE COURT: Hold on. Overruled. You can answer.

16 A. I don't recall all the emails that we traded back and  
17 forth. I'm not aware of or have any recollection of this.

18 Q. Can you point me to anywhere in your report that discusses  
19 mergers between Golden Gate and Black Elk?

20 A. If we had it, it probably would have been disclosed in the  
21 investments footnote.

22 Q. Would this have been the sort of material item that you  
23 would want to receive pursuant to the agreement that Platinum  
24 Management signed?

25 A. It would be information that we would like to consider,

MCECpla4

McGowan - Cross

1 yes.

2 Q. You testified about the material weakness conclusion that  
3 BDO issued in your direct. Do you recall that?

4 A. Yes.

5 Q. Why, what were the material weaknesses?

6 A. Well, it's a combination of the length, the process that we  
7 had to go through relating to gathering all the information for  
8 us to complete the audit, which was not in a timely manner.  
9 Also, a big piece of that was that we actually had them book a  
10 significant adjustment to one of their valuations, which, up  
11 until they agreed to it, had been in disagreement with our  
12 analysis.

13 Q. Why didn't you, if you were a qualified or a restricted  
14 audit?

15 A. I don't know what a restricted opinion is.

16 Q. Well, why didn't you -- qualify --

17 A. We had determined that we believed we had all the evidence  
18 that we needed to opine on the financial statements as a whole  
19 and give reasonable assurance that they were free from a  
20 material mistake.

21 Q. As you sit here today, does that remain true?

22 A. Again, I am not aware of any facts that would have changed  
23 our view, and if there are, we would need time to evaluate them  
24 in connection with the audit that we had completed.

25 MR. GLUCK: Mr. Parson, just bring up

MCECpla4

McGowan - Cross

1 Plaintiffs' Exhibit 970, please.

2 Move into evidence.

3 MS. MOSSE: No objection.

4 THE COURT: Received.

5 (Plaintiff's Exhibit 970 received in evidence)

6 Q. Does this refresh your recollection as to whether BDO was  
7 informed about the sale of the Golden Gate debt to Beechwood?

8 A. It certainly -- I'm an addressee on this email, but I don't  
9 recall the specifics. I don't remember.

10 Q. That debt was going to come due in full in November of  
11 2015; right?

12 A. I don't remember.

13 Q. \$40 million, approximately?

14 A. I don't remember.

15 Q. And you don't know one way or another whether Golden Gate  
16 was able to make its interest payments under this note?

17 A. Again, I'd have to look at the work papers. I don't recall  
18 the specifics.

19 Q. It would have \$200,000 in the bank, though; right?

20 A. You mean as of 2013?

21 Q. Yeah.

22 A. Yeah.

23 MR. GLUCK: Could you call up Plaintiffs' Exhibit 960,  
24 please.

25 Q. Now, in just in this email, only Nordlicht is disclosed as

154 MCECpl4

154 McGowan - Cross

154 a Beechwood owner, and not Mr. Bodner and Mr. Huberfeld; right?

155 A. Yes.

156 Q. Were you aware that Mr. Bodner and Mr. Huberfeld were  
157 owners of Beechwood?

158 A. Again, I don't recall the specifics.

159 MR. GLUCK: All right. Now, 960, please, which we'll  
160 move into evidence.

161 MS. MOSSE: No objection.

162 THE COURT: Received.

163 (Plaintiff's Exhibit 960 received in evidence)

164 MR. GLUCK: Item No. 1, page 2.

165 Q. Is this a set of regulations governing how accountants are  
166 supposed to treat deficiencies of the sorts that we were  
167 discussing?

168 A. Yes, it looks like it's part of the standard.

169 Q. Was the disclosure of this deficiency to Platinum  
170 Management mandatory or voluntary?

171 A. We are required under the standards to communicate to those  
172 charged with governance and material weakness.

173 Q. So can you just walk us through the difference between  
174 deficiency, significant deficiency, and material weakness?

175 A. Well, I mean, the standards are sort of laid out right  
176 here.

177 But, again, as we look at the three levels of  
178 deficiencies, a deficiency is essentially a deficiency in

MCECpla4

McGowan - Cross

1 internal control where there might be misstatements that go  
2 either undetected or non-corrected. However, those are  
3 generally considered not material.

4 A significant deficiency is a deficiency or a  
5 combination of deficiencies where it, again, it's been  
6 concluded that it's not material, but we, you know, as  
7 auditors, it's our judgment that we want to give it more  
8 emphasis.

9 And then a material weakness is where there's a  
10 deficiency or a combination of deficiencies where it is either  
11 a material misstatement was not corrected or the possibility of  
12 a material misstatement could go undetected.

13 Q. What you said is the third one, right, material weakness?

14 A. Yes.

15 Q. A combination?

16 A. Yes.

17 Q. What was the reaction of Platinum Management when you sent  
18 that notification?

19 A. I don't recall much reaction.

20 Q. Did they fire you?

21 A. We were -- we did not renew the engagement for 2014.

22 MR. GLUCK: Call up Plaintiffs' Exhibit 984.

23 Move into evidence.

24 MS. MOSSE: No objection.

25 THE COURT: Received.

MCECpla4

McGowan - Cross

1 (Plaintiff's Exhibit 984 received in evidence)

2 Q. Whose decision was it not to renew the engagement?

3 A. Management.

4 Q. Platinum Management's?

5 A. Platinum Management's.

6 Q. How were you informed of that decision?

7 A. I received a phonecall from Joe SanFilippo.

8 Q. This letter came later, didn't it?

9 A. I believe so, yes.

10 Q. There has been litigation and arbitrations against BDO USA  
11 and BDO Cayman from PPVA and other investors in which BDO has  
12 taken the position of *in pari delicto*; is that right?

13 MS. MOSSE: Objection.

14 THE COURT: Ground.

15 MS. MOSSE: 401 and 403.

16 THE COURT: No, I think this goes to bias. Overruled.

17 A. I'm not aware of the specifics around the cases that are  
18 being dealt with by BDO's counsel. I'm only aware that I've  
19 been asked to be a party for depositions as required.

20 Q. Do you have an understanding of what the phrase *in pari*  
21 *delicto* means?

22 A. No, I don't.

23 Q. If I was to tell you it was a Latin phrase that means in  
24 equal fault --

25 MS. MOSSE: Objection.

MCECpl4

McGowan - Redirect

1                   THE COURT: Sustained.

2 Q. Has BDO contended that BDO is in equal fault?

3                   THE COURT: Sustained. Sustained. He doesn't have  
4 any knowledge.

5                   MR. GLUCK: That concludes. Thank you.

6                   THE COURT: It's not being received. It's as to his  
7 state of mind.

8                   MR. GLUCK: Yes, I think we moved this in.

9                   THE COURT: Redirect.

10                  MS. MOSSE: Can we pull up DX 569, please. Can we go  
11 to page 41, please, 42 of the PDF. Can you highlight the  
12 second full paragraph, please.

13                  REDIRECT EXAMINATION

14                  BY MS. MOSSE:

15 Q. Mr. McGowan, you were asked some questions about Beechwood  
16 and whether you knew it was a related party of Platinum; is  
17 that right?

18 A. Yes.

19 Q. And in the email that we just looked at, I think it was  
20 PX 970, you saw that it was communicated to you that Beechwood  
21 was a related party of Platinum; is that correct?

22 A. Yes.

23 Q. And that is also reflected in this note to Platinum's  
24 financial statements for the yearend December 31, 2013?

25 A. Yes.

MCECpla4

McGowan - Redirect

1 Q. And that note was audited by BDO?

2 A. I don't recall the extent of procedures we did around that  
3 disclosure, but we likely got some support.

4 Q. Was it BDO's common practice to audit footnote disclosures  
5 in its clients' financial statements?

6 A. Yes.

7 Q. And this footnote refers to Beechwood being a related party  
8 of Platinum and also refers to it purchasing debt of Golden  
9 Gate; is that correct?

10 A. Yes.

11 (Continued on next page)

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McGowan - Redirect

1 Q. And so that's something that was audited by BDO, is that  
2 right?

3 A. It was included in our procedures related to the audit of  
4 the financial statement. To what extent, I don't recall.

5 Q. Do you have any reason to believe that BDO did not audit  
6 this particular portion of Platinum's footnote disclosures?

7 A. No.

8 Q. You were asked questions about Glacial and adjustment to  
9 Platinum's valuation of Glacial. Do you remember that?

10 A. I did respond to information related to Glacial, yes.

11 Q. And I believe you testified that Platinum did ultimately  
12 agree with BDO's proposed adjustment?

13 A. They ultimately booked the adjust, yes.

14 Q. So Platinum adjusted the valuation of Glacial to go in line  
15 with what BDO recommended.

16 A. Yes.

17 Q. You were asked questions about the reserve report for  
18 Golden Gate and whether you had reviewed a report by NSAI, and  
19 I think you were shown an e-mail that referred to the NSAI  
20 report. Do you remember that?

21 A. Yes.

22 Q. The reserve report that you -- that BDO did review for  
23 Golden Gate was issued by D&M, DeGolyer McNaughton is that  
24 correct?

25 A. Yes.

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McGowan - Redirect

1 Q. Do you have any basis to question the reliability of the  
2 D&M report?

3 A. No we had done procedures around who D&M was.

4 Q. And did BDO conclude that D&M was a reliable expert?

5 MR. GLUCK: Objection.

6 BY MS. MOSSE:

7 Q. Can we pull up DX 696, please.

8 Is this one of BDO's work papers?

9 A. Yes.

10 MS. MOSSE: I offer it.

11 MR. GLUCK: No objection.

12 THE COURT: Received.

13 (Defendant's Exhibit 696 received in evidence)

14 BY MS. MOSSE:

15 Q. This form is entitled "Use of Management's Experts."

16 What's the purpose of this form?

17 A. This is a document with certain information around  
18 management's experts to evaluate them from a professional  
19 perspective.

20 Q. And what does this particular form reflect?

21 A. It is discussing D&M.

22 Q. Can we turn to page 2, please.

23 The blue box on the bottom, what does that reflect?

24 A. It reflects a conclusion to the question that is being  
25 asked. It is: Is management's expert sufficiently competent,

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McGowan - Redirect

1 capable, and objective for our purposes? Yes.

2 Q. That was BDO's conclusion with respect to D&M?

3 A. Yes.

4 Q. And D&M was the company that issued the reserve report for  
5 Golden Gate as of December 31, 2013?

6 A. Yes.

7 Q. I think we talked about this before when we were reviewing  
8 the valuation report, but Black Elk made public filings with  
9 the SEC, is that right?

10 A. Yes.

11 Q. And as part of BDO's work, would it review those public  
12 filings?

13 A. Yes, it would.

14 Q. And so if BDO was auditing PPVA's financial statements for  
15 the year end 2013, would it review filings that Black Elk made  
16 for the year 2013?

17 A. Yes, we included those in our work papers.

18 Q. Can we pull up DX 008, please. This is already in  
19 evidence. Can you turn, please, to page 11. I am looking for  
20 the page that actually is numbered 11. Can you highlight,  
21 please, the second paragraph under "senior secured revolving  
22 credit facility." And then highlight point 10, please.

23 You were asked questions about Black Elk Opportunity  
24 Fund. Do you remember that?

25 A. Yes.

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McGowan - Redirect

1 Q. Is this a reference to Black Elk Opportunity Fund in  
2 Black Elk's publicly filed financial statement for September --  
3 sorry, publicly filed form 10-Q for the quarter ended September  
4 30, 2013?

5 A. Yes, it's a reference to the fund that's identified here,  
6 yes.

7 Q. Can you turn, please, three pages ahead in the PDF to page  
8 13 on the bottom. And can you call out the first two  
9 paragraphs, please -- sorry, the first two paragraphs under  
10 note 8, the first two paragraphs.

11 Looking at the first sentence, do you see again  
12 reference to Platinum Partners Black Elk Opportunity Fund?

13 A. Yes.

14 Q. Can you turn, please, to page 17 of this document. Call  
15 out the first paragraph, please.

16 You were asked questions about whether Black Elk was  
17 ever considering purchasing Golden Gate Oil. Do you remember  
18 that?

19 A. Yes.

20 Q. And do you see that that is disclosed in Black Elk's  
21 publicly filed form 10-Q?

22 A. Yes.

23 Q. Can we please turn back in this document five pages,  
24 please, there is not a page number, but two pages after 13.

25 This is a section of this publicly filed document on

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McGowan - Redirect

1 the West Delta incident. Do you see that?

2 A. Yes.

3 Q. And if you look at the paragraph that begins "as of  
4 November 2013," can we zoom out, please?

5 "As of November 12, 2013" you were asked if you had  
6 knowledge of any lawsuits that were filed in relation to the  
7 West Delta incident. Do you remember that?

8 A. Yes.

9 Q. And does this paragraph of Black Elk's publicly filed form  
10-Q reference lawsuits that were filed as a result of the West  
11 Delta incident?

12 A. Yes.

13 Q. You can take this down, please.

14 You were asked about a sale of Black Elk's -- certain  
15 of Black Elk's assets in August of 2014. Do you recall that?

16 A. Yes.

17 Q. If BDO was valuing PPVA's interest in Black Elk as of year  
18 end 2013, what relevance, if any, would a sale of certain of  
19 Black Elk's assets in August 2014 have -- not as of 2014 have  
20 to BDO review as of the prior year end?

21 A. You know, while you consider the facts that are known and  
22 knowable as of the balance sheet date, you also evaluate  
23 subsequent events for whether or not any of that information  
24 could have been known or knowable or if they are applicable in  
25 any way. Particularly look to that, you know, we had done some

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McGowan - Recross

1 work to just do a reasonableness on the sale prices that we  
2 believed were related to the reserve sold in looking at where  
3 our VBA -- our valuation specialists were coming up with their  
4 ultimate multiples as of December 31.

5 Q. And with all of that knowledge that you had as to the  
6 subsequent event, BDO's opinion remains that Platinum's  
7 financial statements presented fairly as of year end 2013, is  
8 that right?

9 A. Yeah, we issued an unqualified opinion, yeah.

10 MS. MOSSE: No further questions.

11 THE COURT: Anything else?

12 MR. GLUCK: Just one.

13 THE COURT: Okay.

14 RECROSS EXAMINATION

15 BY MR. GLUCK:

16 Q. Black Elk had a purchase option for Golden Gate for \$60  
17 million. Golden Gate had \$40 million worth of debt. What's  
18 the maximum that its equity could have been worth?

19 A. You know, again, I would have to understand that in terms  
20 of what that full transaction meant, and, you know, the  
21 valuation methodology applied related to the reserves, so  
22 that's a specific related-party transaction. I can't really  
23 answer that question without evaluating all the facts.

24 Q. Couldn't have been more than \$20 million, which would have  
25 been a sixth of what's in the audit, right?

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1 MS. MOSSE: Objection.

2 THE COURT: Overruled.

3 A. Again, I would have to consider that with all the facts  
4 around the transaction and the other work that we did. I can't  
5 answer that question.

6 MR. GLUCK: Thank you very much, sir.

7 THE COURT: Thank you very much. You can step down.

8 THE WITNESS: Thank you.

9 (Witness excused)

10 THE COURT: All right. Anything else from the  
11 defense?

12 MS. MOSSE: Your Honor, at this time we have certain  
13 exhibits that we would like to admit pursuant to a stipulation.

14 THE COURT: Go ahead.

15 MS. MOSSE: DX 552, DX 561, DX 566, DX 601, DX 605,  
16 DX 614, DX 641, DX 637, and DX 647.

17 THE COURT: Any objection?

18 MS. SHEN: No objection.

19 THE COURT: Received.

20 (Defendant's Exhibits 552, 561, 566, 601, 605, 614,  
21 641, 637, and 647 received in evidence)

22 THE COURT: Anything else?

23 MR. LAUER: At this time the defense rests.

24 THE COURT: Very good.

25 Ladies and gentlemen, that concludes the evidence in

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1 this case. So I have a proposition to put to you. I could ask  
2 you to just sit here for 4:30 because you expected to go to  
3 4:30. You could look up at the ceiling. You could contemplate  
4 all the mysteries of life.

5 But to get serious for a minute, we are going to  
6 excuse you now, but I wonder—tell me by raising your hands if  
7 this is a problem—whether tomorrow we could begin at 9:00  
8 rather than 9:30. And the reason for that is I have given each  
9 side two hours for their closing arguments. So if we start at  
10 9:00, we can have the plaintiffs' argument concluded by 11:00,  
11 take a short break, and then we could have the defense finish  
12 by a few minutes after 1:00, and then you would have, of  
13 course, your lunch break. So there wouldn't be any split  
14 between before and after lunch in their closing arguments. I  
15 think that would make a lot of sense, but it means you are  
16 coming in at 9:00.

17 Now, is that a problem? Terrific. You are such a  
18 great jury.

19 All right. So we will see you at 9:00 tomorrow.

20 (Continued on next page)

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1 (Jury not present)

2 THE COURT: All right. So I thank counsel again for  
3 their latest submissions. And all four submissions, ones that  
4 came in at noon and ones that just came in, if they haven't  
5 been docketed already will be. I will hand them right now to  
6 my law clerk to docket if they haven't already been.

7 I have already indicated that I am dismissing the  
8 fraud count as not pled in any way separate from the fiduciary  
9 breach count. I am finding that the -- I am concluding that  
10 the breach count does have to be an intentional breach, but  
11 therefore that the statute of limitations is six years.

12 I don't think I am persuaded that FIFO should apply.

13 The hardest question, closest question is the one  
14 regarding the 18 million, and after a lot of thought and study,  
15 I have concluded that I will allow plaintiffs' counsel to argue  
16 for that, and therefore there is no need to put in any  
17 additional documents. I do think that the binding statement of  
18 damages is that set forth in Mr. Quintero's report. But on  
19 rereading, I think there is enough there—it's not totally  
20 consistent, but I think there is enough there to allow the  
21 argument for the 18 million. And I am somewhat solidified in  
22 that conclusion by going back to my *Daubert* decision where I  
23 reached the same conclusion.

24 I do think, because this is a close call, that we  
25 should add to the verdict form a fourth question. You saw my

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1 verdict form with three questions. The fourth question will  
2 read: Please indicate how much of this amount, if any, is for  
3 incentive fees based on the 2012 NAV.

4 So if the Court of Appeals disagrees with me on this  
5 point, we don't have to retry the whole case and we can just  
6 subtract whatever that amount is.

7 I have incorporated my rulings, including not only the  
8 ones I just mentioned but some other ones that are referred to  
9 in your letters, in what I consider a final draft or maybe  
10 penultimate draft of the Court's instructions of law, which I  
11 will ask my law clerk to now hand out in its latest form to  
12 both counsel.

13 I have included -- I have taken out the "for example"  
14 language in the instruction, I think it was ten or whatever,  
15 and I have included some language suggested by defense counsel  
16 on incentive fees and management fees, but I put it into the  
17 damages section, not the earlier section. So you will see  
18 that.

19 Since we ended, and I thank all counsel very much for  
20 the alacrity with which we proceeded today, but since it is  
21 3:00 and I don't have another court matter until 4:30, what I  
22 suggest is you look over the final penultimate instructions  
23 that I just gave you, and I will get you the revised verdict  
24 form and my law clerk bring it to you in about five minutes,  
25 and then I will hear one final argument on anything after you

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1 have read the new language in both the instructions and in the  
2 verdict form you want to make at 3:30. I don't want to rehear  
3 any of the stuff that we argued until 8:30 last night. This is  
4 just any -- you will see where the language has been changed  
5 and if there is any problems with any of that, this would be  
6 your opportunity to object to it.

7 I should note that on summation I always allow counsel  
8 to quote from my instructions since you have them in advance.  
9 Some judges don't allow that. I do. So feel free to make  
10 reference to the instructions.

11 I assume at this point defense counsel wants to renew  
12 his Rule 50 motion.

13 MR. LAUER: Yes, your Honor, without elaboration  
14 unless the Court --

15 THE COURT: No, but I know the Court of Appeals says  
16 if you don't do that, as you said before, waiver reigns, so the  
17 motion is made. I assume it is made on each and all of the  
18 points raised previously.

19 Is there anything new that you wanted to raise?

20 MR. LAUER: Well, in light of what the Court has just  
21 ruled, which did I not expect, I want to renew the 50 motion  
22 but also make the specific comment for the Court that the  
23 *Daubert*, when the Court ruled that they would be restricted to  
24 55 million, if that's what the Court is referring to,  
25 demonstrably the 55 million does not include a single dollar of

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1 2012 fees. That is a fact. No one can honestly dispute it. I  
2 can demonstrably prove it. So if the Court was thinking  
3 that --

4 THE COURT: No, that wasn't -- there were two things.  
5 I don't think it will ultimately change my mind, but I will  
6 hear what you have to say because while the primary reason for  
7 my ruling was that while there are, I think it's fair to say,  
8 inconsistent statements or at least vague statements in the  
9 Quintero report, some of which support your position, which is  
10 why I say it is a close call, I think there was enough there to  
11 allow him to say what he said.

12 But having said that, yes, I was reinforced by the  
13 reference in plaintiffs' letter to what I had said at *Daubert*,  
14 which I thought did include the 18 million, but if I am -- I  
15 didn't go back and look at the *Daubert* opinion itself, I just  
16 took their letter. So if that's wrong, now is the time to let  
17 me know and I will rethink it once again.

18 MR. LAUER: It is demonstrably wrong and that is why,  
19 with all due respect for your Honor, you are completely being  
20 misled. And let me explain one example of why the 55 million  
21 does not include a dollar of 2012 fees.

22 There is no dispute in this case that the last  
23 incentive fee paid is in June of 2014. So what that means is  
24 fees that were based on 2014 accrued incentive fees were not  
25 paid. Fees that were accrued for the three months of March 16

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1 were not paid.

2 Now, when you go to those charts or the table which  
3 lists 2013, 2014, 2015, and 2016, and they add up to 55  
4 million, and you start working backwards, you realize that this  
5 is not a chart of payments, it's a chart by year.

6 In other words, the first three months of 2016, which  
7 no one disputes was never paid, is based on accrual within '16.

8 The number for 2015, again, no one disputes that not a  
9 dollar of the number in the '15 column was ever paid.

10 Then you go back '14, not a dollar of the '14 fees was  
11 ever paid.

12 Now you go to '13. A portion of that may have been  
13 paid -- was paid, and that's the end of the table.

14 That table, which adds up to 55, does not contain a  
15 dollar of 2012.

16 THE COURT: I gave to my law clerk this morning, but  
17 I'm not sure he can find it, but it's in one of those manila  
18 folders, which is the *Daubert* opinion, or if someone has it,  
19 maybe they can pass it up to me, then I will want to hear from  
20 plaintiffs' counsel.

21 (Pause)

22 THE COURT: So let me go back while we are searching  
23 for the *Daubert* opinion. Hand me back the letters that I just  
24 handed you.

25 MR. GLUCK: A copy for the Court.

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1                   THE COURT: I will take it.

2                   So the letter of defense counsel that I partly relied  
3 on says—this is on page 3 of the letter submitted around noon  
4 on December 14, today—"Accordingly, Mr. Quintero specifically  
5 opined that zero incentive fees should have been paid on  
6 account of PPVA performance in 2012 or any time thereafter.  
7 See also *Daubert* opinion, docket entry 646, at 40, confirming  
8 Quintero opinion that no incentive fee should have been paid  
9 during the damages period and further ruling that Quintero may  
10 testify as to 55.03 million incentive fees that were  
11 illegitimately claimed."

12                  And page 40 of the *Daubert* opinion says, starting at  
13 the top of the page, "Nevertheless, Quintero may testify that  
14 damages attributable to excessive incentive fees amount to  
15 55.083 million. Bodner here argues that such damages figures  
16 must be lower than 55.083 million because some portion of that  
17 must have been based on legitimate gains. However, Quintero's  
18 assumption here is indeed that all of the 55.083 million was  
19 illegitimately gained, given that Quintero's estimated true  
20 value for each and every asset at issue decreased over time  
21 during the damages period, therefore, according to Quintero, no  
22 incentive fees should have been paid cumulatively during the  
23 damages period at all. See Quintero report, Exhibits 23.1,  
24 24.1, 25.1, 26.1, 27.1, 28.1, 29.1 and 30.1. In sum, Quintero  
25 may testify that the amount of damages attributable to

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1 excessive management fees is 55.083 million but not that such  
2 amount is at least 55.083 million or 88.9 million."

3 So I think in one way that captures the same  
4 ambiguities that we have been dealing with in his report, which  
5 is that on the one hand he gives a figure and on the other hand  
6 he says that there should be no incentive fees paid during the  
7 damages period which goes back to December 2012. However, I  
8 was under the impression—and defense counsel now says it was a  
9 misimpression—that the figure he was now seeking as of the  
10 time of the *Daubert* report he testified to was 55 million then  
11 he also made the argument for more based on other factors and  
12 those were just considered.

13 So let me ask plaintiffs' counsel is the 55 million  
14 exclusive of the 18 million?

15 MR. GLUCK: So I did my best to accurately set forth  
16 the chain of events in my letter of last night, which I  
17 finished around 3 in the morning. Here is the deal.

18 Effectively, until yesterday afternoon, defense  
19 counsel had been making a series of arguments that I found  
20 incorrect on their face, which is that Mr. Quintero had never  
21 suggested that 2012 incentive fees were overpaid or that he did  
22 not analyze the assets in 2012. Okay? Most specifically he  
23 analyzed the Black Elk problems leading up to the explosion and  
24 then the explosion.

25 Yesterday afternoon, it became apparent for the first

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1 time what the basis, which I am trying to verify, of  
2 defendant's counsel's argument just made was. What they appear  
3 to be saying, and this is set forth in my letter and in I think  
4 the exact same words, is that if Mr. Quintero intended for the  
5 2013 fees to be part of the, quote, 55 million -- the \$13  
6 million number and not an \$18 million number, the number should  
7 have been 68 million. There is an arithmetic error. And that  
8 is why I suggested that to the extent there is an arithmetic  
9 error, it could be very easily corrected by the documents  
10 referenced in his report to particular bank statements.

11 I got it now for basically the first time what they  
12 are saying is that if you add the 2016 LP interests—tell me if  
13 I'm wrong—and then add the 2015 LP interests, none of which  
14 were ever redeemed for cash, and then you add the 2014 LP  
15 interests, none of which were redeemed for cash, and then you  
16 add the combination of 2013 cash and noncash interests, and  
17 then you add the 2012 cash and noncash interests, the number  
18 should come out to about 68 million approximately, 13 million  
19 more than the 55.

20 And what it appears to me, having poured over this for  
21 hours last night, is that Mr. Quintero, in that section on the  
22 88 million, was referencing payments, some of which were  
23 withdrawn, for example, payments to Bernie Fuchs's family  
24 members. And in a nutshell, while we are trying to work  
25 through this with Mr. Quintero, and Mr. Bixter is not here

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1 today, I am going to go ahead and assume that my rendition just  
2 now of defendant's thesis is correct. And by the way, that is  
3 the exact same thesis that was placed into my letter of this  
4 morning.

5 Now, what the letter suggests is that there is no  
6 reasonable argument that Mr. Quintero evaluated the assets up  
7 to 2012, particularly Black Elk. And he clearly—and it's  
8 quoted in a very long footnote—testified that his opinion was  
9 that the drop in the value of PPVA Black Elk common equity  
10 proximate to the problems of 2012 and the explosion, about 200  
11 million worth, could not have been made up by any of the  
12 purported gains in the other assets. And so the NAV didn't go  
13 up and incentive fees were zero. Those are the core opinions  
14 of his report. Period, full stop.

15 Now, in his --

16 MR. LAUER: Are you done?

17 MR. GLUCK: No. Because I fundamentally disagree with  
18 98 percent of what Mr. Lauer has said, and I believe that this  
19 circumstance has been brought about by a fundamentally  
20 incorrect argument repeated over about six months now which  
21 obfuscated this narrow accounting issue. There is an  
22 arithmetic error they say. They say that if you add up the  
23 noncash fees and the cash fees, going back to 2012, what we  
24 will find is that Quintero's \$55 million number should have  
25 been 68 million.

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1                   And this is the solution we presented in the letter.  
2                   The 13 million -- it is not 18 million. The 13 million of cash  
3                   incentive fees paid in 2012 are clearly and unambiguously  
4                   referenced on a PPVA bank statement where basically they were  
5                   the only transactions for the whole month—one \$500,000  
6                   transaction, one \$13 million transaction approximating it is  
7                   approximately about \$13.7 million.

8                   Now, Quintero referenced it, and I think, I think that  
9                   he was including that within his \$80 million number. The  
10                  question we believe the Court put to us yesterday was whether,  
11                  under these circumstances, Mr. Quintero can utilize a number  
12                  other than 55 million.

13                  And under that ground, here is what the letter says  
14                  and here is what I say: When this Court issued the *Daubert*  
15                  opinion, it is not clear to me, because the argument came  
16                  later, that the Court was aware that for the '12-'13 fees, a  
17                  portion of them, it is admitted, were never redeemed for cash.  
18                  They were just LP interests and they just sat there. And  
19                  therefore, when the -- when they argue that neither management  
20                  fees nor incentive fees were damages of the master fund it was  
21                  one of the core arguments in the *Daubert* hearing and papers,  
22                  the outcome the Court settled on was that if the money came out  
23                  of the master fund bank account, it was damages to the master  
24                  fund.

25                  The instant that ruling was made, the 55 million

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1 number was no longer the number. In fact, it was 30.3,  
2 whatever the number is on that chart. What they are -- so it  
3 was automatic. We could no longer in good faith -- we PPVA,  
4 could no longer say that there were 55 million of incentive  
5 fees damages because the Court ruled that the only damages that  
6 we could claim were the ones that came out of the bank account.  
7 So then we looked and we said, okay, which ones came out of the  
8 bank accounts, and the answer was 30.2 million.

9                   What they are saying now, as I understand it, is that  
10 if one looks back, the number shouldn't have been 55 million,  
11 it should have been 68 million and that within the \$55 million  
12 number, Quintero made some sort of arithmetic error that I am  
13 now attributing because I am looking at it.

14                   THE COURT: I'm going to cut you off because I want to  
15 ask a question of defense counsel in a minute, but before I do,  
16 you can both be seated for a minute. I have now gone back and  
17 looked at the *Daubert* report and I think it is consistent with  
18 what plaintiffs' counsel just said, subject to hearing from  
19 defense counsel.

20                   The real problem here in part is that Mr. Quintero's  
21 expert report is less than careful. I decided not to confront  
22 him when he was on the stand with the innumerable grammatical  
23 and punctuation errors in his report because it wasn't really  
24 relevant to the jury and because to go through all of them  
25 would have required at least an hour. But the man is incapable

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1 of writing a coherent -- a fully coherent, grammatically and  
2 punctuationally correct report.

3 But what I think emerges from his report and was more  
4 than the *Daubert* reason for my determination, although the  
5 *Daubert* played a role, was his statement on page 18 of his  
6 report that "the damages from inflated incentive fees are  
7 limited to what was charged to Platinum during the Damages  
8 Period," which is a defined term that's been repeatedly pointed  
9 out, and is here shown to be a defined term because of its  
10 initial caps.

11 Continuing with the sentence "which has been  
12 calculated as of the date of this report as 66.083 million  
13 subject to further refinement."

14 And then in the next paragraph, he says, "The damages  
15 sustained by the fund pertaining to inflated incentive fees  
16 were at least the full amount of incentive fees charged to the  
17 fund during the damages period," which has apparently been  
18 calculated in an amount of 55 million. And then he references  
19 Exhibit 21 which is filled with typos and other  
20 inconsistencies.

21 But in my *Daubert* ruling, what I was confronting was  
22 the claim that he could somehow increase still further the  
23 amount of damages based on those words "at least" which I  
24 rejected because of internal inconsistencies and because it  
25 went beyond anything that was fairly set forth in his report.

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1                   So what I was addressing there was the attempt to get  
2 a still higher figure and not really the issue that was raised  
3 last night and earlier by defense counsel.

4                   But what I want to know from defense counsel is where  
5 in his report, in Quintero's report does he say that we are not  
6 claiming any incentive fees paid for the year end December 2012  
7 NAV?

8                   MR. LAUER: Okay.

9                   THE COURT: Go ahead.

10                  MR. LAUER: Let me start with the quote in the *Daubert*  
11 where the Court said -- and I'm not relying on the *Daubert*. I  
12 want to explain to the Court that there is no inconsistency  
13 between the *Daubert* and the tables. The Court said, "See  
14 Quintero report Exhibits 23.1, 24.1, 25.1, 26.1, 27.1, 28.1,  
15 29.1, 30.1." Each of those is the schedules which is the only  
16 valuation level work which in any typical situation would be  
17 viewed as the only acceptable manifestation of his valuation  
18 opinion. These are the individual schedules for the straight  
19 line method. And the Court will note at the top of each one  
20 the -- the two that are relevant to December 2012—Black Elk  
21 which is 23.1 and Golden Gate Oil, 24.1—the amount of inflated  
22 incentive fees for December 31, 2012 is zero. So let's just  
23 start there. The Court's own reference to the 55 million and  
24 the chart was Quintero is saying in his report I have 55  
25 million dollars of incentive fees that were charged, not paid,

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1 charged. And they are backed up by my schedules and those  
2 schedules as it relates to December 2012 were zero. That's the  
3 first point.

4 THE COURT: Let me just -- so I am looking at the  
5 *Daubert* decision, page 40, which was the page that you are  
6 citing and also the page that plaintiffs' letter cited, and it  
7 is addressed to a different issue. The argument that was being  
8 made by plaintiffs here was that they could go beyond the  
9 actual cash payments. And I rejected that. And then you made  
10 the argument, I will quote from the *Daubert* opinion, "Bodner  
11 here argues that such damages figures must be lower than 55.83  
12 million because some portion of that must have been based on  
13 legitimate gains." That is a totally different argument.

14 MR. LAUER: I agree, and that has nothing to do with  
15 our motion.

16 THE COURT: I agree with that. But therefore I don't  
17 think you can say that the *Daubert* opinion wasn't supportive of  
18 the ruling that I made a few minutes ago that you are now  
19 challenging, because what I said in the *Daubert* was: He says  
20 it's the whole kit and kaboodle for all the damages period.  
21 You say it should be -- no, it should only be some portion of  
22 it because there were some legitimate gains. I don't think  
23 that precludes him from his argument that it's the whole thing,  
24 and I just used the figure he had given for the whole thing, 55  
25 million, but -- and said he couldn't therefore go beyond it

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1 because his new theory went beyond cash to other stuff. So  
2 that seemed to me to be a clear message that he was allowed to  
3 challenge all incentive fees but only up to what was actually  
4 paid in cash. And that's why plaintiffs' counsel I think quite  
5 correctly said that after he read that he realized the 55  
6 million figure was more than just cash and he would reduce it,  
7 which he did. I don't see how any of that supports your notion  
8 that I was saying you can't include 2012.

9 MR. LAUER: Your Honor, my reference to the *Daubert*  
10 earlier, which unleashed this, frankly completely irrelevant,  
11 and I will deal with each of those issues, because your Honor  
12 asked -- your Honor asked a very simple question to plaintiffs'  
13 counsel which never got answered, but which I will get back to.  
14 My reference to the *Daubert* was not to rely on the *Daubert*. We  
15 are not relying on --

16 THE COURT: No, but you were saying the 55 million --

17 MR. LAUER: Exactly.

18 THE COURT: -- included the 18 million, but --

19 MR. LAUER: It did not include the 55 million --

20 THE COURT: -- did not include the 18 million --

21 MR. LAUER: -- and --

22 THE COURT: -- but I think that --

23 MR. LAUER: -- I'm going to get to --

24 THE COURT: -- that is an irrelevancy as far as the  
25 *Daubert* opinion.

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1 MR. LAUER: I agree.

2 THE COURT: Okay.

3 MR. LAUER: But to the extent the Court thought that  
4 the *Daubert* 55 included --

5 THE COURT: No, no, no, what I said earlier, maybe I  
6 wasn't as clear, I said I was -- I thought that plaintiffs  
7 could claim the 18 million as part of their damages and my  
8 primary reason for saying that was language in Mr. Quintero's  
9 report, notwithstanding some inconsistent language that was  
10 discussed at length, and I mentioned I was further supported in  
11 that conclusion by what I said in the *Daubert* decision. And I  
12 think I still have further support in that because what the  
13 *Daubert* decision said was he can testify notwithstanding a  
14 different objection you had raised to all the incentive fees  
15 during the damages period, but he just can't go beyond the  
16 cash. But anyway let me hear final argument on this.

17 MR. LAUER: So I don't understand what is happening  
18 here. The question that was posed to plaintiffs' counsel, and  
19 I am paraphrasing, is: Do you agree that with respect to  
20 schedule 21, which has the 55 million in incentive fees, do you  
21 agree -- and which has the chart where the Court observed and  
22 Quintero agreed it's a typo, it should say damages for  
23 incentive fees during the period January 2013, the question to  
24 plaintiffs' counsel was: Do you agree that those columns—'16,  
25 '15, '14, '13—purport to represent fees that were charged on

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1 the basis of the year of the AUMs in the years identified, and  
2 this is not purporting to be a chart of when payments were  
3 made, that indeed this chart, schedule 21, is not addressing  
4 2012. That was the question. You didn't get an answer to  
5 that.

6 So that I don't turn this back over to another  
7 filibuster, I'm going to answer the question for counsel  
8 because I applaud his alacrity at this in not directly  
9 answering the question. So that's point one.

10 Number two, coming back to the *Daubert* and this issue  
11 that, you know, for fours years we have been pushing to say  
12 there are no incentive fees, we made our original motion *in*  
13 *limine* on this issue more than a year ago. So there is no  
14 misunderstanding here. What was happening at the *Daubert* to  
15 the benefit of everyone had nothing to do at the end of the day  
16 from their perspective the 88 million or 89 million that  
17 Quintero had in his report and the Court said it seems a little  
18 bit illogical that you can claim inflation of 89 million if  
19 only 55 million went out.

20 (Continued on next page)

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1                   MR. LAUER: Putting aside whether he really could or  
2 not construct this up-and-down thing, that's what that was  
3 about, that had --

4                   THE COURT: I agree.

5                   MR. LAUER: It had nothing to do with what year's fees  
6 are included. So the only thing --

7                   THE COURT: No, it was assumed and not challenged at  
8 the *Daubert* hearing, it doesn't mean you waive your right to  
9 challenge it here, that what plaintiffs were claiming was all  
10 the incentive fees for the damages period.

11                  MR. LAUER: Which is --

12                  THE COURT: And, therefore, I assume that, as well, I  
13 just disagreed that that could include things other than cash.

14                  MR. LAUER: No, because if you look at paragraph 32,  
15 which has this 88.929, he says during the damages period that  
16 aggregated more than \$55 million, again citing schedule 21.

17                  THE COURT: Yeah, you're back to his report, and I  
18 agree that, in the end, the plaintiffs are bound by his report.  
19 I don't accept that they can add this back in through the  
20 testimony that they were asserting of other people and  
21 documents they haven't yet offered. On that, I totally agreed  
22 with defense counsel.

23                  MR. LAUER: I just want to make one other point.

24                  THE COURT: But when I went back and looked at the  
25 report, with all its seeming inconsistencies and other errs, it

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1 seems to me that it was consistent in its fundamental theory,  
2 which was that none of the incentive fees for the damages  
3 period should ever have been paid because if they were the  
4 product of a gross overinflation, and if you subtracted that  
5 inflation, you had loss, not gain. That theory, I think,  
6 permeates the report and that's why I changed my mind last  
7 night. I was leaning in your direction, I know you're  
8 disappointed I changed my mind, but it is Felix Frankfurter  
9 famously said, the fact the wisdom comes late does not mean it  
10 should be ignored.

11 MR. LAUER: Of course with disappointment, but I think  
12 the Court should perhaps look at this from defense counsel's  
13 perspective. I'm not talking about now. In 2019, we get this  
14 report. Any rational person reading this report and  
15 understanding that he's doing these schedules would conclude  
16 that to the extent the expert is expressing an opinion -- and  
17 in this court and in every court, an expert's report is not  
18 deemed to -- a one-liner in a expert's report that is not  
19 connected to the scientific work is not deemed an opinion.

20 THE COURT: I agree with that, and that's why I was  
21 leaning your way last night, but when I went back and read the  
22 report, it's not just a one-liner, it's a whole theory that's  
23 developed at some considerable length throughout the report,  
24 and that is that, simply put, but put this way, in various  
25 places in the report, that because of overinflation, there

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2 really were no gains, therefore, there should have been no  
3 incentive fees paid, and this was true for the entire damages  
period.

4 MR. LAUER: Then he didn't need to do these schedules.  
5 Our *Daubert* motion originally was this man did not do  
6 appraisals, he came in with this arbitrary set of numbers on  
7 the schedules starting with zero. No one, no one could  
8 reasonably assume, looking at those schedules, which are the  
9 body of the work, no one could assume that for Black Elk and  
10 Golden Gate for December, when he says zero, that he really  
11 means \$18 million. That's what this is about because you can't  
12 put in those schedules, have us do discovery and decide, well,  
13 we don't need -- if we're not dealing with 2012, this is what  
14 we're dealing with. So this is truly remarkable. When you  
15 look at that report, almost all the work in terms of numeric  
16 work is in the schedules, that was his report. I didn't do a  
17 valuation.

18 Then you have these miscellaneous statements that are  
19 not connected. If he meant to include 2012 beyond the 55, he  
20 should have had five years there, '12, '13, '14, '15 '16. This  
21 is really total, total attempt to survive -- to have something  
22 survive that, when looked at, never said I am expressing an  
23 opinion that when it says zero, it really means \$18 million.

24 And when you look, it's not just the chart with the  
25 numbers. You look at the point 2 section, he's expressing the

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adjusted value of \$284 million. So if he's expressing the adjusted value of \$284 million, for purposes of how he did his model -- I didn't tell him to do it this way. For purposes of how he did his model -- how can they come into court and say we fooled you, you guys are idiots. It said we slipped in something, \$66 million, which doesn't add up to 18 and 55, it would be 73. I have no idea what the 66 is.

THE COURT: He does also say 73.

Let me ask you this, did you question him on this at his deposition?

MR. LAUER: We questioned him on his methodology. We saw no reason to talk to him about '12 because this said zero. We were happy to have zero.

THE COURT: I hear what you're saying about reliance, but another way to look at it is even though you thought his methodology -- even though you thought his approach did not include 2012, you never asked him about that at his deposition, you didn't raise it with the Court at the *Daubert* hearing. If it was something you were so clearly, in your mind, relying on, you would have thought you would have at least asked him at his deposition, isn't it true that you're claiming zero for the period related to 2012.

MR. LAUER: I was happy with his schedule. I was happy to say this guy says zero, he's got a schedule, which, in my view, is indefensible, and we'll take it on. And my

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2 experience -- I didn't do Quintero, but my experience with  
3 experts, you don't want to play your game in the locker room.  
4 You are much better off just playing around the issues, don't  
5 do your examination because you can always supplement his  
report.

6 I would like to just say a few other things on related  
7 matters.

8 I think his testimony should be stricken. I think the  
9 Court has to consider the fact that there is no evidence by the  
10 plaintiffs that at least \$13.4 million of the \$30 million on  
11 their chart was ever paid. That's a separate issue that  
12 Mr. Hertzberg raised in the letter. But I have to say, if the  
13 Court allows them to completely renege and contradict their  
14 schedules, I have to ask for a mistrial.

15 Your Honor, we relied on that. We relied on that in  
16 how we prepared for this case. They have made -- in response  
17 to our original motion *in limine*, they said, well, you know  
18 what, even if 2012 is not in the case -- I don't remember their  
19 exact words -- we want to move -- we want disgorgement because  
20 we can get disgorgement from Bodner in 2013 when he's a  
21 faithless servant even if the 2012 is not in the case.

22 From day one, we have operated on the assumption, on  
23 the basis of Quintero's zeros and his valuation at \$284 million  
24 for Black Elk, that 2012 was not in the case. And to put it in  
25 the case because the Court sees 66.083 or because Quintero came

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2 up with this interesting idea that during the damages period,  
3 meaning the part of this chart, he can do more than 55 because  
4 if, if it wasn't only not appropriately increased, it should  
5 have been decreased. That's what he meant by the 89. We were  
6 happy with the 55 ruling, but whether we were at 55 or 89,  
7 there's still nothing in his report that says to counsel, my  
zero should not be taken seriously, I'm fooling you.

8 So I have to ask the Court to reconsider this --

9 THE COURT: In the report itself - I'm not asking  
10 inferences you derived from his schedules, whatever - where do  
11 you say it says it's zero for 2012?

12 MR. LAUER: The top of schedule 23.1 and the top of  
13 24.1.

14 THE COURT: Let me look at those again. My question  
15 was about where it is in the main part of his report, but let's  
16 see. So 23.1, where are you?

17 MR. LAUER: The top lines, excess of reported over  
18 adjusted NAV, and then at the very right, total damages from  
19 inflated fees, zero, zero, zero, zero, zero, zero.

20 THE COURT: You pointed this out to me last night, but  
21 I had forgotten about this.

22 So let me hear now from plaintiffs' counsel.

23 MR. LAUER: It's also in 24.1 for Golden Gate.

24 MR. GLUCK: It's for all of it.

25 MR. LAUER: Only two of them are for 2012.

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1                   MR. GLUCK: It is for all of them because some didn't  
2 exist in 2012. It's a very simple answer to everything that  
3 Mr. Lauer said. And, frankly, we've entered the silly zone,  
4 which is why we're here today.

5                   What Mr. Quintero decided to do, in the context of his  
6 straight-line analysis, which was unnecessary, not necessary,  
7 was to put in incentive fees column next to his straight-line  
8 analysis as an FYI. It was not his incentive fees analysis.  
9 That is what the Court is talking about when it says it  
10 permeates his report. This notion that there was reliance on  
11 these charts is the fiction that has brought us here today.

12                  Point one, I think, and Mr. Hertzberg can correct me,  
13 that this was expressly raised over about 50 pages in his  
14 deposition. Not a little bit, but a lot. If I'm wrong on  
15 that, let me know with my fairly distinct memory, maybe I'm  
16 wrong, I'm tired.

17                  But, let's be clear and let's get real. What happened  
18 here is that defendant believed in its own argument that  
19 management fees and incentive fees were not damages of the  
20 master fund. That is what happened. And then, when in the  
21 *Daubert* the decision the Court ruled that actually, that which  
22 came out of the master fund's bank account were damages to the  
23 master fund, that is when the motions *in limine* started. And  
24 they stemmed from the false premise, this demonstratively false  
25 premise, not in the sense that there is no arguable

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1 inconsistency, but demonstratively false premise that  
2 Mr. Quintero never or disclaimed that incentive fees  
3 attributable to 2012 were damages, he just didn't, and that's  
4 what's obvious and that's what improperly colored any argument  
5 that he has had until yesterday.

6 And now yesterday, for the very first time, we hear an  
7 argument that at least I understand. What he's saying is that  
8 within the \$55 million, when you did your reduction, if you had  
9 done it properly, it's not 18. This is one of the problems  
10 here, he keeps saying 18 and it's a misfact and it colors the  
11 rest of the argument as being wrong. That is one of the things  
12 that's happening. What Mr. Lauer is suggesting is that he  
13 relied on these schedules, planned his whole case around it  
14 when the exact opposite is true, we did all of discovery with  
15 no distinction whatsoever between LP interests and fees and  
16 cash payments. It was for the very first time in the whole  
17 case, including, by the way, at a deposition, including in a  
18 deposition that, at *Daubert*, the thesis that the master fund  
19 was damaged by payment of fees was challenged for the very  
20 first time, and they didn't just challenge it for incentive  
21 fees, they challenged it for management fees.

22 So we arrived at a place after *Daubert* where the Court  
23 says fees out of the fund's bank account are challenged, and  
24 all that happened thereafter --

25 THE COURT: I'm going to cut you off because I'm going

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1 to adhere to my ruling.

2 I would note one other thing, in exhibit 23, before we  
3 get to the schedule, he is recounting what led to inflation,  
4 and his second entry is September 17, 2012. That's even before  
5 the explosion, "S&P lowered its corporate credit rating on  
6 Black Elk to CCC plus with a negative outlook for reasons  
7 including, one, vulnerable business risk; two, highly leveraged  
8 financial risk; three, small reserve and production base; four,  
9 high operating costs; five, weak sources of liquidity; and six,  
10 insufficient cash flow to cover anticipated capital  
11 expenditure." That's all before the explosion. So, I think  
12 the only fair way to read that entry from his report is you got  
13 to be kidding, you're saying the value of this entity is going  
14 up when there are six good reasons why it should be viewed as  
15 down. And then, of course, on 11/16/12 is the explosion.

16 However, I recognize that there are good arguments on  
17 both sides, and that's why I have added to the verdict form the  
18 additional proposed question so that if I'm wrong, we can just  
19 subtract out whatever portion of the damages they ascribe to  
20 the 2012 NAV.

21 So, it's now quarter of 4:00 and I still wanted to  
22 give you all a chance to look over the final jury instructions  
23 and also the final verdict form, which we'll get to in a couple  
24 minutes. I have another matter at 4:30, so why don't we  
25 reconvene at 10 minutes after 4:00.

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1                   MR. LAUER: Your Honor, I would just ask you to  
2 consider the other two issues, which is that there is no  
3 evidence of payment of management fees, the last \$5.7 million;  
4 and second, the point that Mr. Hertzberg raised in his letter  
5 that there is no evidence with respect to at least  
6 \$13.4 million of the \$30 million that was on their chart, that  
7 any of it was ever paid in cash or redeemed in cash. I'm not  
8 going to argue it --

9                   THE COURT: So I guess the question on the latter  
10 part, because I noticed that the representation was it was in  
11 the bank records that were presented, and so, one of you is  
12 saying it is in his records, one of you is saying it isn't in  
13 his records. If you, maybe between now and ten after 4:00,  
14 plaintiffs counsel can pull --

15                   MR. GLUCK: With respect, I don't think that's what  
16 Mr. Lauer is saying. He's trying to say there's no evidence in  
17 this case to that effect.

18                   MR. LAUER: Right.

19                   MR. GLUCK: He's not disputing they're in the bank  
20 records, and this is why I can answer his problems in two  
21 seconds. There is evidence in this case, Mr. Quintero's  
22 testimony, who reviewed the bank records. The bank records  
23 clearly and unambiguously show that \$5 million payment  
24 occurring in June or May 2016, that's the management fee side,  
25 and they clearly and unambiguously show the \$13 million being

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1 paid in January --

2 THE COURT: When Mr. Quintero was testifying, did you  
3 ask him -- you asked him whether he reviewed the bank records.  
4 Did you ask him specifically about those two calculations?

5 MR. GLUCK: Yeah, remember when I was doing the five  
6 minutes right at the end and I had the manila envelopes, that's  
7 exactly what I was doing and that was exactly what I did in the  
8 management fees section. That, I did realize where he is  
9 going, because there is no question about it --

10 THE COURT: Since he's an expert, he can rely upon  
11 records that are actually not in evidence as long as they are  
12 admissible, and, of course, bank records are classically  
13 admitted as business records. So what about them?

14 MR. HERTZBERG: Your Honor, what we were addressing in  
15 the letter was the request last night of Mr. Gluck that they  
16 recall Mr. Trott to get in evidence --

17 THE COURT: I've ruled that out.

18 MR. HERTZBERG: And we're all past that. So we oppose  
19 that effort to get in additional evidence that these --

20 THE COURT: And you win on that.

21 MR. HERTZBERG: So the record is what it is then.

22 THE COURT: If your assertion is that there is no  
23 evidence in the record to support that figure, and the  
24 representation of plaintiffs' counsel is he specifically asked  
25 Mr. Quintero is that part of your figure, yes, and where did

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2 you get it, that it was paid, and the answer was bank records,  
3 why can't the jury then -- why isn't that more than sufficient  
4 to take the issue to the jury?

5 MR. HERTZBERG: It very well may be. We were  
6 responding to the application, after they had rested, to put in  
7 somebody --

8 THE COURT: So I come back, Mr. Lauer, doesn't sound  
9 like it's an issue.

10 MR. LAUER: I will have to check. If, in fact,  
11 Quintero said that, then I agree. I don't recall him saying  
12 it, but we'll check that.

13 THE COURT: You've got 20 minutes.

14 MR. GLUCK: This is where I want to be heard for two  
15 minutes. That five minutes when I had those envelopes, that's  
16 exactly what I was trying to elicit.

17 THE COURT: It's not a question of what you were  
18 trying to do, it's a question of --

19 MR. GLUCK: That's my point, that I specifically was  
20 asking, and if it had taken another two minutes -- the record  
21 says what it says, but if there is any actual dispute, these  
22 are not in the bank statements, let me know. And if all we  
23 need --

24 THE COURT: No, that's not the question. Listen,  
25 we're going to take this break so you can find what he said or  
didn't say and then we can continue then.

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1 (Recess)

2 THE COURT: Please be seated.

3 So, first, any further objections to any of the new  
4 language added to the Court's instructions of law? All  
5 previously argued objections are reserved, obviously. I just  
6 want if there's anything new.

7 MS. SHEN: Your Honor, we have no objections, but we  
8 do have two suggestions to just clarify some of the  
9 instructions.

10 THE COURT: Page and line.

11 MS. SHEN: On page 14, instructions No. 10.

12 THE COURT: I'm sorry, page --

13 MS. SHEN: 14, instruction No. 10.

14 THE COURT: Go ahead.

15 MS. SHEN: We ask that the words "claim one" be  
16 removed --

17 THE COURT: I'm sorry. Where are you looking at?

18 MS. SHEN: I'm looking at the subheading under  
19 instruction No. 10.

20 THE COURT: That should have been taken out. Thank  
21 you very much. It should just read breach of fiduciary duty.  
22 So the question, which I'm sure you'll be able to answer is,  
23 should I impose criminal contempt on my law clerk and send him  
24 to jail tonight or just forgive him? We'll just forgive him.

25 And there was something else?

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1 MS. SHEN: Yes. On the same page --

2 THE COURT: I'm sorry?

3 MS. SHEN: On the first line of the substantive  
4 instruction 10, we would just ask that plaintiffs' first  
5 claim --

6 THE COURT: Yes, take out the word "first." So it  
7 just says specifically then, plaintiffs' claim is, et cetera.  
8 Thank you very much.

9 MS. SHEN: And one more, your Honor, on page 16.

10 THE COURT: You're two for two so far. Go ahead.

11 MS. SHEN: In the third line of the instruction, we  
12 would ask that the phrase "or claims" be removed. So it will  
13 just read "Mr. Bodner must still be found not liable on that  
14 claim."

15 THE COURT: Yes. Okay. You're three for three.  
16 Thank you very much.

17 Anything from defense counsel?

18 MR. LAUER: I hope I do as well.

19 THE COURT: Go ahead.

20 MR. LAUER: Your Honor, I know you thought about this.  
21 We would ask you to reconsider and remove the basis for  
22 liability of Mr. Huberfeld for the following reason.

23 THE COURT: There was another close call, I agree.

24 MR. LAUER: I think if the issue is extreme prejudice,  
25 this is extreme prejudice for the following reason: It was

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1 only a day or two ago that the Court had us address and then  
2 the Court decided that the Court was going to apply a  
3 retroactive conspiracy approach in the case, and that  
4 Mr. Bodner could be liable for past damages based on a  
5 conspiracy. Prior to that, conspiracy was not in this case.  
6 So we prepared --

7 THE COURT: Well, it's always in the case in the  
8 sense, which is not different from what you're saying. It was  
9 a basis of the admission of certain testimony.

10 MR. LAUER: I understand that, it was an admission.  
11 But the case, put simply, was originally that David Bodner --

12 THE COURT: Let me hear from plaintiffs' counsel  
13 because I went back and forth on this with myself last night.  
14 What is the evidence that Mr. Bodner had an agreement, even if  
15 it's implicit, with Mr. Huberfeld to defraud investors by not  
16 revealing the overvaluation?

17 MR. GLUCK: The record is replete from the trip to  
18 Acapulco after the release, going all the way back to 2012.  
19 Mr. Huberfeld is in virtually all of the meetings that we went  
20 through today during the summary exhibits session.

21 THE COURT: If that was something where Mr. Nordlicht  
22 was, in effect, running the show, Mr. Bodner, you argue, may  
23 have joined him, Mr. Huberfeld may have joined him, but I don't  
24 recall anything suggesting that Mr. Huberfeld said, directly or  
25 indirectly to Mr. Bodner, let's go along with this

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1 overinflation.

2 MR. GLUCK: Beechwood, when he's sitting in the  
3 offices, allocating the Beechwood money for the debt stability  
4 scheme, Beechwood, Bodner, and Huberfeld -- but I actually have  
5 a suggestion that may solve some of this, because I've been  
6 thinking --

7 THE COURT: Let me go back to defense counsel. What  
8 about Beechwood?

9 MR. LAUER: There's nothing in the joint pretrial  
10 order that was the basis for preparation for the actual trial  
11 that in any way purports to attribute liability in any way on  
12 the basis of Bodner's relationship with Huberfeld. So going  
13 into this trial, we're preparing to defend, in a sense, is  
14 Bodner in some way helping Nordlicht or, quote, Platinum  
15 Management do whatever is alleged.

16 THE COURT: Although I knocked out the conspiracy  
17 count, the conspiracy count was not knocked out on the basis  
18 that it didn't allege a conspiracy between, among others,  
19 Bodner and Huberfeld.

20 MR. LAUER: I understand that, but there's nothing in  
21 the pretrial order that identifies Huberfeld and Bodner that  
22 their bilateral relationship is a meaningful issue at this  
23 trial.

24 THE COURT: So let me go back. That's a fair point.

25 MR. GLUCK: I have an aside, which is Latkin's

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1 testimony. They were always being reported to together. There  
2 is quite a bit of evidence, I went through it yesterday. I'm  
3 trying to think a way through this.

4 THE COURT: His point is different. His point is that  
5 if you wanted to claim, even for evidentiary purposes, a  
6 conspiracy between Bodner and Huberfeld, you needed to set it  
7 forth in the pretrial order. I'm not 100 percent sure he's  
8 right about whether that's required, but that's the assertion.

9 MR. GLUCK: We had a whole jury instruction about the  
10 unincorporated partnership. Mr. Huberfeld's primary purpose  
11 for being called was to testify about their relationship over  
12 the years. When --

13 THE COURT: I'm going to leave it as is.

14 MR. GLUCK: And then also --

15 THE COURT: You don't have to say anything more. When  
16 you win, you should shut up.

17 MR. LAUER: We take very strong exception.

18 THE COURT: I know. I know. And to quote, and the  
19 record should reflect that for not just now in this trial, but  
20 for literally decades, it has been my privilege to be aware of  
21 what an exceptional lawyer Mr. Lauer is. So everything you say  
22 I take very seriously.

23 MR. LAUER: Thank you, your Honor.

24 THE COURT: But, nevertheless, I've ruled.

25 Was there anything else from the defense, other than

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2 we're going to get to, in a minute, the question we left  
3 hanging about what was in the transcript. But anything about  
4 the charge that anyone has?

5 MR. HERTZBERG: Nothing else from the defense.

6 THE COURT: So we'll make the Shen changes.

7 And anything about the verdict form that anyone has a  
8 problem with?

9 MS. SHEN: Plaintiffs have no objections to the  
10 verdict form as is.

11 MR. HERTZBERG: None from us either.

12 THE COURT: Very good.

13 Now, the only other open question is what was said to  
14 Mr. Quintero about, and did you calculate the figures for this  
15 or that or whatever based on the bank records. So what's in  
the transcript?

16 MS. SHEN: So, your Honor, there's testimony in  
17 multiple pieces from Mr. Quintero's time on the stand. The  
18 first is he testified extensively about PX 924, which is the  
19 summary exhibit noting specifically that there were \$30,773,579  
20 incentive fees paid out. Then, at transcript page 1543, lines  
21 4 through 14, he was asked:

22 "Q. Mr. Quintero, what sorts of documents and data did you  
23 review to arrive at the conclusions and figures that we're  
24 seeing on this chart?

25 "A. The third-party administrator SS&C produces reports on a

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2 variety of things, including changes in the fund interest. So  
3 those reports provide me a basis to be able to see what were  
4 the payments either in kind or in cash. And then I also saw  
5 bank statements over this period of roughly 40 months that  
6 provided me the ability to see what the actual cash received,  
7 either directly or indirectly through this two-step process  
was."

8 THE COURT: Okay. Now, was he asked about whether he  
9 was basing this on the bank records?

10 MS. SHEN: Yes. So in that specific portion, he said  
11 that he reviewed bank statements over this period of roughly  
12 40 months. And then, also, in addition to that, he said at  
13 page 152, starting at line 13 -- sorry. I'm sorry. I misread.  
14 It was page 1549, lines 15 through 22. The Court asked  
15 Mr. Quintero:

16 "Well, in your report, it says, quote, this is  
17 paragraph 24, I did not review any documentation prepared by  
18 the defendants that detail their monthly computation of  
19 management fees and incentive fees. However, the liquidators  
20 and foreign representatives retained in this matter were able  
21 to trace management fees and incentive fees to bank statements,  
22 general ledgers, and other certain financial records."

23 "So is that what you relied on?" And Mr. Quintero  
24 answered the Court: "Yes, your Honor."

25 THE COURT: Always good to have a short answer.

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1 I think that is sufficient, but let me hear if defense  
2 counsel wants to say anything in response.

3 MR. HERTZBERG: With respect to PX 924, which breaks  
4 up the \$30.7 million into the cash incentive fees to the GP  
5 account, which is \$13 million, I'm going to call it \$14 million  
6 because it's just a few dollars short. That number, that  
7 breakdown of the February 13 payment and the February 14  
8 payment, not in Mr. Quintero's report. He did say what  
9 Ms. Shen says he said from the stand, it was conclusory, but I  
10 don't think there's any dispute that those two numbers are not  
11 in his report. They're not in the schedules.

12 THE COURT: That's a different point than the one you  
13 were making before. Did you object at the time on that basis  
14 to this particular exhibit? Your colleague was not shy about  
15 saying making an objection not in the report, this, that, or  
16 the other.

17 MR. HERTZBERG: I'm going to rely on the fact that I  
18 think he was bouncing up and down for the entirety of  
19 Mr. Quintero's time on the stand.

20 THE COURT: I thought that was just, you know, we old  
21 men need our exercise.

22 MR. HERTZBERG: My colleagues are telling me he did,  
23 in fact, object, page 966, line 5. We object for the record.  
24 I think he said it a few times.

25 THE COURT: I'm sorry?

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1 MR. HERTZBERG: Yes, it's page 966, line 5 where that  
2 objection was made.

3 THE COURT: That's a different point now. But,  
4 nevertheless, I'm not going to go through all the arguments.  
5 I'm going to allow counsel to still present those as potential  
6 damages. I think there is enough there, it was in the record.  
7 Whether it was in the report or not, certainly it's implicitly  
8 in the report and I think maybe it might be explicitly, but we  
9 don't need to worry about that.

10 MR. GLUCK: Formal instances, objection's overruled.

11 THE COURT: Yeah. I think I already overall denied  
12 the Rule 50 motion, but just in case, it is hereby denied.

13 Now, as you can see, people are already coming in  
14 court for the 4:30 matter that I have. We will begin promptly  
15 at 9:00. Plaintiffs' counsel has until 11:00. We will then  
16 take probably a 10-minute break and defense counsel will have  
17 the two full hours, so we'll go slightly past 1 o'clock, then  
18 we'll excuse the jury for lunch. Then we'll have my  
19 instructions of law right after lunch, and then the case will  
20 be theirs to deliberate.

21 During deliberations, there must always be on this  
22 floor, it can be in the corridor right outside, at least one  
23 attorney from each side who can respond to any notes we get  
24 from the jury. I don't want to have to go searching for you.  
25 The defendant is welcome to remain, but if he prefers not to,

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2 that's his choice, but I always need an attorney from both  
3 sides.

4               Okay. When the verdict comes in, there are three  
5 possibilities. One is that one side will be ecstatic and the  
6 other devastated. The second is that both sides will be  
7 disappointed. The third is that all counsel say, well, at  
8 least we can go home now. But I want to say all counsel in  
9 this case I thought were terrific, and not just counsel, the  
10 paralegals, as well. Not only did you do an excellent,  
11 excellent job, but you even put up with the judge. So my great  
12 thanks to all of you. And I say this now because who knows  
13 when the verdict will be. I don't want to be seen as  
14 commenting on the verdict. I never comment on the verdict.

15               So if you can vacate the premises so I can start the  
16 4:30 matter, that would be much --

17               MR. HERTZBERG: Your Honor, is the jury going to  
18 deliberate from 9:00 to 5:

19               THE COURT: I'll let them deliberate whenever they  
20 want. I'll initially suggest tomorrow 4:30, but if they say  
they rather go to 5:00, I will allow it. Okay.

21               (Adjourned to December 15, 2022 at 9:00 a.m.)

22               \* \* \*

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## 14 PLAINTIFF EXHIBITS

15	Exhibit No.	Received
16	440 . . . . .	1803
17	956 . . . . .	1804
18	578 . . . . .	1805
19	1283 . . . . .	1807
20	1325 . . . . .	1807
21	1327 . . . . .	1808
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2	1167	1813
3	1187	1814
4	1205	1817
5	1244	1817
6	1108	1818
7	1441	1820
8	1132	1820
9	1134	1821
10	1226	1822
11	433	1823
12	985	1892
13	537	1921
14	970	1923
15	960	1924
16	984	1926

## 17 DEFENDANT EXHIBITS

18	Exhibit No.	Received
19	762	1802
20	673	1827
21	576	1871
22	602	1873
23	577	1874
24	570	1887
25	696	1930

1 552, 561, 566, 601, 605, 614, 641, 637, . . . 1935

2 and 647

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